Nos. 12251 and 12252

In the United States Court of Appeals for the Ninth Circuit

J. HOWARD MCGRATH, AS THE ATTORNEY GENERAL OF THE UNITED STATES, ET AL., APPELLANTS

v.

TADAYASU ABO ET AL., APPELLEES

J. HOWARD MCGRATH, AS THE ATTORNEY GENERAL OF THE UNITED STATES, ET AL., APPELLANTS

v.

MARY KANAME FURUYA ET AL., APPELLEES

ON APPEALS FROM JUDGMENTS OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

BRIEF FOR APPELLANTS

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APPENDIX

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CITATIONS

Cases:

In the United States Court of Appeals for the Ninth Circuit

No. 12251

J. Howard McGrath, as the Attorney General of the United States, et al., appellants

v.

Tadayasu Abo, et al., appellees

No. 12252 [1]

J. Howard McGrath, as the Attorney General of the United States, et al., appellants

v.

Mary Kaname Furuya et al., appellees

ON APPEALS FROM JUDGMENTS OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

The appeal in No. 12251 [1] is from a judgment entered April 12, 1949 (R. 481–484), as modified by an

[1] By stipulation and order herein on June 27, 1949 (R. 510), proceedings in this Court in No. 12252 have been suspended to await the outcome of No. 12251. Accordingly this brief will hereinafter ignore No. 12252. Two companion habeas corpus proceedings, involving a number of the same appellees, are also pending before this Court as Nos. 12195 and 12196. A similar

order entered May 2, 1949 (R. 490), by the United States District Court for the Northern District of California, Southern Division, declaring null and void *ab initio,* and setting aside, renunciations of citizenship theretofore executed by appellees (who hereinafter, for convenience, will be designated plaintiffs as in the court below) and approved by the Attorney General pursuant to the provisions of § 401 (i) of the Nationality Act of 1940, as amended (8 U. S. C. 801 (i)). The judgment also declared that each of the plaintiffs is entitled to all rights of citizenship and permanently enjoins each of the defendants from detaining, imprisoning, or interning the plaintiffs or any of them, and from removing them to Japan or elsewhere and from interfering with their freedom of movement within the United States and right of access to their homes in the United States from abroad (except that the authority of the Secretary of State under 8 U. S. C. 903, with respect to persons abroad claiming United States citizenship, is not affected) and from otherwise interfering with their rights of citizenship.

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stipulation and order was entered in No. 12195 (R. 219) with reference to the suspension of proceedings in No. 12196. The record in No. 12195 will be found repeatedly to make reference to the printed record in the instant cause No. 12251, wherein are set forth many of the basic evidentiary documents relating to all cases. This confusing inter-relation of the four pending appeals results from the fact that the causes were consolidated into one proceeding in the court below. Compare, for example, p. 203 of the record in No. 12195 with R. 410 in the instant case. While Nos. 12195 and 12251 are treated separately and briefed separately in this court, it is believed that the fact of their consolidation for purposes of proceedings in the court below should be born in mind in order to avoid confusion that otherwise might result.

The original complaint (R. 2–3 and R. 4–5) named as defendants Tom Clark, as Attorney General; Frank J. Hennessy, as United States Attorney; James F. Byrnes, as Secretary of State; Fred Vinson, as Secretary of the Treasury; Ugo Carusi, as Commissioner of the United States Immigration and Naturalization Service; Irving M. Wixon, as District Director of that Service; James E. Markham, as Alien Property Custodian; Harold Ickes, as Secretary of the Interior; Dillon S. Myer, as Director, War Relocation Authority; Raymond R. Best, as Project Director, Tule Lake; and Irvin Williams, as Officer in Charge of the Immigration and Naturalization Service at Tule Lake. A question in this case is whether any defendant other than Clark, Hennessy, and Wixon, consented to the jurisdiction of the Court (R. 127). The District Court found that all such defendants appeared in the cause (R. 468–469) and obviously directed the above-described judgment against such of the original defendants as remained in office and against the substituted successors in office of the others (R. 123–124, 454–455).

Paragraph I of the amended complaint states that—

> this Court has original jurisdiction to entertain the suit by virtue of the provisions of Title 28, U. S. C. A., sec. 41 (1) [now 28 U. S. C. § 1331], Title 8, U. S. C. A., sec. 903, and Title 28, § U. S. C. A., sec. 400 [now 28 U. S. C. § 2201].

The answer of the defendants Clark, Hennessy, and Wixon neither admitted nor denied the conclusions of law contained in Paragraph I of the amended complaint, but did admit the allegation therein that the

plaintiffs are residents of the Northern District of California and that the matter in controversy exceeded the sum of $3,000 as to each plaintiff, exclusive of interest and costs (R. 126).

As will be more fully shown (see Appendix I, *infra*) 300 plaintiffs remained under actual restraint until released therefrom as a consequence of the orders of the District Court in Nos. 12195 and 12196. Since such plaintiffs continue to be subject to removal orders as dangerous alien enemies and subject to apprehension and actual removal in the event that the decisions of the District Court are ultimately reversed, it is conceded as to them that the District Court had jurisdiction to issue the judgment in this case insofar, but only insofar, as such judgment is against the Attorney General and properly rests upon Section 503 of the Nationality Act of 1940, 54 Stat. 1171 (8 U. S. C. § 903). Many of the present plaintiffs were named as parties to the suit while they were actually interned and subject to removal orders, but thereafter such removal orders were rescinded and they were released from internment pursuant to administrative action (see Appendix A, *infra*). As to these plaintiffs it is conceded that the District Court had jurisdiction, under Section 503, *supra,* as to the Attorney General, at the time that they became parties to the suit, but the question arises as to whether or not the case thereby became moot with respect to them in the sense that no case or controversy, within the reach of the judicial power of the United States, continued to exist. Some 2,556 persons were named as parties to the suit after the removal orders as to

them had been cancelled and after they had been released from custody (see p. 25, *infra*). It is the appellants' position that the District Court never had jurisdiction in the cause in any respect insofar as it relates to such persons.

This Court has jurisdiction to review the judgment of the District Court Under Title 28, U. S. C., Sec. 1291.

STATEMENT

I. The limiting effect on this appeal of the administrative decision to accept and apply the opinion of this court in the case of *Acheson* v. *Murakami*

In view of the important effect of the Government's decision not to apply for a writ of certiorari in the case of *Acheson* v. *Murakami,* 176 F. (2d) 953, upon the positions taken in this brief, it seems desirable to set forth an explanation of that matter at this point.

In that case the State Department had refused to issue passports to three American-born women of Japanese descent, on the sole ground that they were no longer citizens or nationals of the United States by reason of their renunciations of citizenship while incarcerated at the W. R. A. segregation center at Tule Lake, California. They brought suit against the Secretary of State, as the head of the Department, thus denying them a right or privilege of citizenship, under 8 U. S. C., § 903, for a judgment declaring them to be nationals of the United States.

That case, like the present case, contained much evidence by way of literature and general affidavits concerning the general conditions and hardships of evacuation, life in the W. R. A. relocation centers,

and the environmental influences and occurrences at the Tule Lake segregation center. Unlike the present case, the record in that case included documentary evidence concerning the plaintiffs' individual acts of renunciation and transcripts of hearings relative thereto. It contained also testimony of the individual plaintiffs, in affidavit form, to the effect that their renunciations were actually influenced by the conditions mentioned. These affidavits formed the basis of specific findings of fact with reference to the involuntary nature of the renunciation of each individual plaintiff, and the District Court held also that they had been found to be free of any suspicion of disloyalty to the United States. Upon this basis it held that the renunciations had been involuntary and were, therefore, void.

In its opinion sustaining the decision of the District Court, this Court emphasized the effects of the evacuation and apparent racial discriminations upon the minds of the evacuees. It pointed to the hardships of life at the Tule Lake center and the presence there of organizations patriotically loyal to Japan and disloyal to the United States, as factors confirming and solidifying the impressions of these people that, as a practical matter, their American citizenship has become valueless. The Court said (at 958):

> Fear of reprisal if one failed to renounce his citizenship was for some the final pressure causing such renunciations. Such violence continuing over a year is another of the worse than penitentiary conditions considered *supra*. Others feared such violence as of the German

> mobs if they returned to their homes when they were free to do so.

Accordingly, it is clear that the Court rejected the theory of the renunciation hearing officers of the Department of Justice, that invalidating coercion could consist only in fear of immediate physical punishment, where renunciations were concerned (see R. 174–175) and held that hardships of evacuation and the so-called general conditions at Tule Lake, when taken together with fear of reprisal from the pro-Japanese elements within the center or fear of hostility of the Caucasian population outside the center, were coercive influences, which, if shown to have produced the renunciations, would render them involuntary and therefore void. However, the opinion of the Court did not go so far as to raise a conclusive or even rebuttable presumption of invalidity of the renunciations in absence of evidence that the individual renunciant actually was deprived of his freedom of choice by the impact of such influences.

The effect of this Court's opinion in the *Murakami* case, upon the policies of the executive branch of the Government, went considerably further than a mere decision not to apply for Supreme Court review. Promptly thereafter affirmative steps were taken to give practical effect to the Court's decision. On October 26, 1949, the Department of Justice made public announcement of its intentions concerning the defense of other similar litigation (Appendix G, *infra*). A day earlier it had advised the State Department of such intentions in a letter (copy of which is set forth in Appendix E, *infra*),

in which it indicated willingness to express to the State Department its view as to the litigating position that it would take in the event that a pending application for a passport should be denied and the applicant should thereafter bring suit. This was for the purpose of assisting the State Department in reaching its determinations, under the *Murakami* case, as to whether or not a particular applicant should be regarded as a citizen. By its letter of November 29, 1949 (a copy of which is set forth in Appendix F, *infra*), the State Department indicated that it intends to apply the *Murakami* decision in making determinations of citizenship with reference to the issuance of passports, and will request the views of the Department of Justice with respect to particular applicants. A similar decision has been reached by the Immigration and Naturalization Service where it is called upon to make determinations of citizenship. It is reasonable to assume that like policies will be followed by other Government agencies if and when questions as to the citizenship of renunciants properly come before them.

As indicated by the above-mentioned documents, the direct application of the *Murakami* decision that will be made by the Department of Justice (apart from the activities of the Immigration and Naturalization Service) will have effect only in litigation that the Department is called upon to prosecute or defend. Where a renunciant brings a suit within the jurisdiction of the Court which involves the issue of the

validity of his act of renunciation at a W. R. A. relocation center, and where the Government files do not contain evidence of disloyalty to the United States, the Department will be willing to stipulate that an affidavit by the plaintiff, similar to those introduced by the plaintiffs in the *Murakami* case, may be accepted by the Court as evidence and objection will not be made to the entry of judgment thereon.

Since the decision in the *Murakami* case is technically limited to the cases of *loyal* citizens who renounced due to the conditions mentioned therein, its application could be limited to persons who had been found to be loyal, but who were permitted to go to, or remained at Tule Lake in order to be with family members who had been segregated as disloyals. However, it is believed that the spirit of the decision goes further. For example, the findings adopted as part of the Court's opinion (at 960–961) contain such statements as these:

> Several reasons were prominent as to why the evacuees decided to become segregants and to assume the status of individuals disloyal to the United States. They included (a) fear of being forced to leave the centers and to face a hostile American public; (b) a concern for the security of their families; (c) fear on the part of the evacuee parents that their sons would be drafted if the sons did not become segregees; (d) anger and disillusionment, owing to the abrogation of the citizenship rights; (e) bitterness over economic losses brought about by the evacuation. A great many of the people at Tule Lake under the segregation program

> also regarded it as a place of refuge where they might remain for the duration of the war.
>
> * * * * *
>
> The segregation program brought together persons who honestly felt an allegiance to Japan and the Japanese Emperor, but it also brought the troublemaker, malcontents, the fractious, the rebellious and frustrated, the draft dodgers, the fanatics, the social misfits, the professional "organizers", the party politicians, the political leaders and their gangs of "goons" and "strong arm" boys.

Accordingly, it was felt that strict application of the decision to the technically loyal would be unduly restrictive and not in accord with the rationale of the decision. For this reason the Department is willing to take the same action in the case of a segregee, who, for example, gave a negative answer to the loyalty question in order to go to Tule Lake for one of the above reasons, as in the case of a technically loyal renunciant, provided that his affidavit satisfactorily explains the matter.

The nature of the affidavits which, it is believed, will be satisfactory in this regard, is described in the above-mentioned letter to the State Department (Appendix E, *infra*). It will be noted that the Department of Justice is willing to consider proposed stipulations with respect to affidavits even of those renunciants who were members of pro-Japanese organizations. Of course, such cases will be scrutinized carefully, and it is most unlikely that the Department will be willing to forego oral testimony and cross-examination where there is any indication of voluntary

activity in promoting the purposes of such organizations. While, necessarily, the affidavit procedure will have no bearing on the cases of the renunciants involved in the present appeal if the decision of the District Court is ultimately affirmed, it will, of course, be equally available to them in the event that it becomes appropriate to take evidence as to their individual cases.

The clear implication of the letter from the State Department (Appendix F, *infra*) is that it will follow the same policies as those of the Department of Justice in reaching its determinations of citizenship in passport proceedings. Particular attention is invited to the last sentence of the letter which announces that the procedure mentioned will have application to renunciants who apply for American passports in this country as well as to renunciants who apply for documentation as American citizens abroad. This clearly means that the mere fact of a renunciant's return to Japan will not necessarily bar administrative relief which otherwise would have been available. Whether and to what extent other agencies of the Government will fall in line with these policies, or will have occasion to do so, is, of course, not known at the present time.

It necessarily follows from what has been said that the appellants do not now urge upon the Court any position inconsistent with its decision in the *Murakami* case or out of harmony with the administrative policies which have been adopted pursuant thereto.

II. Questions presented

Stated generally the questions are:

1. Whether the Court below had jurisdiction over the cause as to certain of the plaintiffs and certain of the defendants, and whether its judgment was in excess of its authority.

2. Whether the plaintiffs proved a *prima facie* case, and if so, whether the defendants' offers of proof were properly rejected as insufficient.

3. Whether the Renunciation Statute (8 U. S. C. § 801 (i)) authorized renunciation of citizenship by persons eighteen years of age and older.

4. Whether the Court below committed reversible error in any of the respects mentioned in the specification of errors, *infra,* pp. 31–55.

III. The nature of the case

In view of the appellants' acceptance of this Court's decision in the *Murakami* case, as dispositive of the issues relating to the potentially coercive character of the so-called general conditions that prevailed at the Tule Lake segregation center and its familiarity with the factual background of the case, it is believed sufficient at this point briefly to summarize the facts which constitute the historical context of the present controversy. If the Court feels that a more comprehensive statement of such facts is necessary, it is respectfully referred to the consolidated brief for the appellants in the cases of *Clark* v. *Inouye* (175 F. 2d 740) and *Acheson* v. *Murakami* (176 F. 2d 953), Nos. 11839 and 12082 in this Court, at pages 9 through

26, in which event the Court is requested to treat such statement as having been incorporated in this brief by this reference.[3]

A description of the effect of the evacuation orders, and the losses and hardships thereby imposed upon the evacuees, is contained in this Court's decision in the *Murakami* case (176 F. 2d at pp. 954–955). (See, also, T&N,[4] pp. 1–23.) Most of the evacuees were required to report to assembly centers from which they were transported to the W. R. A. relocation centers. Certain aspects of the living conditions at one of these centers, i. e., that at Tule Lake, are described in the *Murakami* case (Id., pp. 955–957). (See, also, T&N, pp. 24–52.)

Evacuees located in such centers were not permitted to leave them except pursuant to leave clearance procedures (described by the Supreme Court

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[3] The statement in the appellant's brief in *Inouye* and *Murakami* cases, as shown therein, is based largely upon a book entitled THE SPOILAGE and upon W. R. A. publications, which constitute parts of the present record (see R. 413 and the stipulation and order concerning certain unprinted record material entered in this Court on July 6, 1949). Referred to also in that statement are the affidavits of Burling and Hanky, which are included in the present record (R. 147, 324). Other affidavits and materials there referred to will be found to be quite similar to the materials in the present record insofar as they relate to the so-called general conditions under which the renunciations occurred. The principal differences between the evidentiary materials in those records and this consist in the absence in the present record of documents, transcripts of hearings, and affidavits bearing upon the individual renunciations of the plaintiffs herein.

[4] As in the consolidated brief in the *Inouye* and *Murakami* cases, this reference is to the book by Dorothy J. Thomas and Richard Nishimoto entitled THE SPOILAGE referred to in the last preceding footnote.

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in the case of *Ex parte Endo,* 323 U. S. 283, which struck down such procedures as illegal where applied to persons whose loyalty to the United States had been determined). In order to facilitate leave clearances the W. R. A., early in 1943, entered into a joint project with the War Department (which was interested in obtaining data upon which to recruit combat teams of American citizens of Japanese ancestry to serve with the Armed forces) under which all evacuees 17 years of age and over were ordered to execute registration forms in which male citizens were asked:

> Question 28: Will you swear unqualified allegiance to the United States of America and faithfully defend the United States from any and/or all attack by foreign or domestic forces and foreswear any form of allegiance or obedience to the Japanese Emperor, or any other foreign government, power, or organization?

Female citizens were asked:

> Question 28: Will you swear unqualified allegiance to the United States of America and foreswear any form of allegiance or obedience to the Japanese Emperor, or any other government, power, or organization?

Numerous evacuees gave negative or qualified answers to this question or refused to answer it. (See T&N, pp. 53–83.)

On July 15, 1943, the W. R. A. designated the Tule Lake relocation center as the facility for the segregation of "those persons of Japanese ancestry residing in relocation centers who by their acts have indi-

cated that their loyalties lie with Japan during the present hostilities" (T&N, p. 85).[5]

The persons required to go to or remain in Tule Lake comprised all evacuees falling into any of three categories (W. R. A. Manual, Chap. 110, § 110.3.1A–C, Appendix B, *infra*), as follows:

I. Applicants for repatriation or expatriation to Japan. (The defendants herein offered to prove that of the 4,315 plaintiffs in the present appeal 1,444 actually went to Japan voluntarily where, presumably, they now are, and that 2,420 others applied for repatriation or expatriation to Japan prior to their renunciation.)[6]

II. Persons who refused to answer or gave negative answers to Questions No. 28, quoted above, and

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[5] Chapter 110 of the W. R. A. Administrative Manual, relative to segregation, is set forth in full in the appellants' consolidated brief in the *Inouye* and *Murakami* cases, Nos. 11839 and 12082 in this Court, as Appendix C. The portions of the regulations relative to classifications of persons required and permitted to go to or remain at Tule Lake as a segregation center are set forth also in Appendix B to this brief.

[6] See analysis of defendants' offers of proof Appendix I, *infra*. No break-down is given as to the reasons for segregation of persons who later went to Japan. It is probable that some of them did not apply for repatriation or expatriation prior to segregation. For example, many of the 284 plaintiffs listed in Exhibit VI may have gone to Tule Lake not as segregees but as family members and they thereafter may have gone to Japan for similar reasons. In all, 4,698 American-born evacuees are said to have been segregated at Tule Lake because of repatriation or expatriation requests. The Evacuated People, p. 169. (Copies of this W. R. A. publication were lodged with the Clerk for use by the Court in consideration of the *Inouye* and *Murakami* cases, *supra*.)

who had not changed their answers prior to October 6, 1943, except those who changed their answers thereafter and satisfied the project director that the changes were *bona fide*. (The defendants offered to prove that 271 of the plaintiffs who remained in the United States fell in this category.)[7]

III. Persons denied leave clearance on grounds relating to security risk. (The defendants offered to prove that 23 plaintiffs who remained in the United States fell in this category.)[8]

Members of the immediate families of persons in the above categories I–III were permitted to go to or remain in the Tule Lake center with them if they wished to do so. (It may be inferred from the defendants' offer of proof that, presumably, 66 plaintiffs who remained in the United States fell in this category.)[9]

No person thus transferred to or remaining in the Tule Lake center could be granted leave clearance directly from the center but provision was made for transfers from the center to other centers, from which leave clearances could be obtained. Persons denied such transfers could file appeals with the Board of

[7] See footnote 6 above. In all, 3,274 American-born evacuees are said to have been segregated at Tule Lake in classification II. (*The Evacuated People*, p. 169.)

[8] See footnote 6 above. 348 American-born evacuees were segregated at Tule Lake in this category (*The Evacuated People*, p. 169).

[9] See footnote 6 above. This classification, obviously, composed largely of children too young to register (see *The Evacuated People*, Table 432, p. 107) included 4,080 American-born evacuees (Id., p. 169).

Appeals for leave clearance (W. R. A. Manual, Chap. 110, sec. 110.9.1–2).[10]

The conditions encountered by the segregees at Tule Lake have been described in this Court's decision in the *Murakami* case, *supra,* and were characterized as "worse than penitentiary conditions" (p. 958). About half of the American-born population, over 15 years of age, at Tule Lake, were Kibei (T & N, p. 370), many of whom were "permanently pro-Japanese. They were the American-born but educated in Japan" (176 F. 2d, at p. 958). (The defendants offered to prove that 2,028 of the plaintiffs had received their formal education in Japan. Appendix A, *infra.*) As found in the *Murakami* case, in addition to the segregees who went to Tule Lake for security reasons or because of bitterness due to losses and disillusionment produced by the evacuation program "the segregation program brought together persons who honestly felt an allegiance to Japan and the Japanese Emperor, but it also brought the troublemakers, the malcontents," etc. (176 F. 2d, at pp. 960–961). "From the 'Kibei' and the disaffected Nisei came the powerful organization of pro-Japanese" at Tule Lake "with their bitter opposition to the loyal Nisei, leading to the fighting, beatings and reputed murder of a loyal American described in" the findings of the District Court in the *Murakami* case (Id., p. 958). (The defendants offered to prove that 225 plaintiffs were

[10] See footnote 5, *supra.*

leaders of such organizations. See analysis of offers, Appendix A, *infra*.)

The renunciation statute was enacted on July 1, 1944 (8 U. S. C., § 801 (i)). The pro-Japanese organizations immediately made renunciation a focal point of their policy (T. & N. 310, 326) and hundreds of requests for renunciation were received by the Department of Justice prior to December 18 of that year (R. 164). On December 17, the Western Defense Command announced the imminent rescission of the exclusion orders and on the following day the Supreme Court handed down its decisions in the *Korematsu* and *Endo* cases.[11] The WRA immediately announced its decision to force resettlements by liquidation of relocation centers within a year (see T. & N. 333–334).[12] On December 20, the WRA leave-clearance provisions were abolished (The Evacuated People, p. 25).

On Tuesday, December 26, 1944, approximately 2,000 pieces of mail were received in the Department of Justice from Tule Lake indicating a desire to renounce citizenship (R. 171).

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[11] In *Korematsu* v. *United States*, 323 U. S. 214, the Court upheld the constitutionality of the exclusion orders. In *Ex parte Endo*, 323 U. S. 283, it struck down the WRA leave-clearance procedures as applied to an admittedly loyal citizen of the United States.

[12] The spoilage incorrectly gives the date of the WRA announcement as December 17. This announcement actually occurred on December 18, 1944. (See Annual Report of the Secretary of Interior for the fiscal year ended June 30, 1945, pp. XXXVIII, 275.)

The Attorney General's regulations establishing the procedures to be followed under the renunciation statute (9 Fed. Reg. 12241) are set forth in Appendix H, *infra*. The hearings provided for by such regulations were given first to known leaders of pro-Japanese organizations who were removed as promptly as possible thereafter to Department of Justice alien enemy internment camps. The first contingent was moved out on December 27, 1944 (T. & N. 339), and the last large group was so removed on March 4, 1945 (T. & N. 357). In the meantime, on January 24, 1945, the Department of Justice published an open letter to the pro-Japanese organizations condemning their activities and ordering them to cease (T. & N. 356). Also, on January 29, WRA gave assurances that "those who do not wish to leave the center at this time are not required to do so and may continue to live here or at some similar center until January 1, 1946" (T. & N. 356; see, also, R. 200–201). Notwithstanding these measures those applicants for renunciation who had not yet been afforded hearings persisted in renouncing (R. 129) and those who had done so took no steps to stay the Attorney General's ultimate approval or to request cancellation thereof until long afterwards (R. 191–192).

In October 1945 (see R. 206), the Department of Justice took jurisdiction over the Tule Lake center

and, in effect, conducted it as an alien enemy internment camp (see R. 95–96, 128). This action was commenced on November 13, 1945 (R. 56), on behalf of approximately 1,400 persons presently named as plaintiffs herein while they were so interned under alien enemy removal orders (R. 95–96, 128). Between November 25, 1945, and February 23, 1946, numerous renunciants elected to and did sail for Japan notwithstanding their opportunity to seek release after mitigation hearings.[13] (The defendants offered to prove that, in all, 1,444 plaintiffs voluntarily went to Japan after renouncing. See Appendix I, *infra*.)

Early in 1946, the Department of Justice conducted mitigation hearings (see R. 57–61, 86–87) which resulted in the cancellation of the removal orders applicable to and in the actual release of all but 300 plaintiffs herein (see Appendix I, *infra*); 2,556 of the present plaintiffs were not named as parties to this suit until after they had been so released (see p. 25, *infra*).

IV. The proceedings below

The original complaint herein (R. 2–56), which was brought on behalf of more than a thousand persons of Japanese ancestry, prayed for an order cancelling and declaring null and void their renunciations of citizenship; requiring their release from internment at Tule Lake; and commanding the cancellation of

[13] The Evacuated People, a Quantitative Description—a WRA Publication, p. 196. See note 6, *supra*.

removal orders outstanding against them under the Alien Enemy Act.[14]

On December 31, 1945, and again on January 2, 1946, stipulations and orders were filed (R. 57–60) reciting that the Department of Justice was about to commence mitigation hearings with reference to the removal orders which would afford the plaintiffs and other renunciants an opportunity to show cause why they should not be deported to Japan pursuant thereto, and provided that the appearance of the plaintiffs at the hearings should neither operate as a waiver of their rights nor prejudice their position in the action.[15] On March 14, 1946, a stipulation and order was filed (R. 86–87) which provided that "the plaintiffs in this suit who are not released from custody * * * and who shall be transferred, in custody, for the convenience of the Government, to an internment camp or place of restraint other than" Tule Lake "will be produced before the above-entitled Court for hearing or trial purposes."

Pursuant to a motion of defendants (R. 89–91) the District Court entered an order on July 10, 1946 (R. 92),

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[14] On the same day it was ordered that certain minors named as plaintiffs in the complaint might appear by a guardian *ad litem*. (R 56.)

[15] On January 2, 1946, a stipulation and order extended defendants' time within which to answer, plead or move, to February 2, 1946 (R. 61). On March 4, 1946, plaintiffs filed a pleading supplementing and amending the complaint (R. 62–85), pursuant to a stipulation (R. 85–86) signed for the Attorney General and United States Attorney by an Assistant United States Attorney as "Attorneys for Defendants," which provided "that service thereof be deemed to have been made on defendants."

striking certain allegations of the complaint and dismissing the original complaint and a supplement thereto (R. 62–86), but gave the defendants 20 days within which to amend. The amended complaint (R. 92–123), praying for substantially the same relief was filed August 15, 1946. An Assistant United States Attorney, on behalf of the Attorney General and United States Attorney, as "Attorneys for Defendants," signed an admission of service "by each of the defendants" (R. 122–123). The following day certain parties defendant were substituted for original defendants (R. 123–124) pursuant to stipulation (R. 124–125) signed in like fashion on behalf of the defendants.[16] On September 23, 1946, the defendants, Tom C. Clark, Attorney General, Frank J. Hennessy, United States Attorney, and Irvin F. Wixon, District Director of the Immigration and Naturalization Service, filed their answer to the amended complaint (R. 126–138), asserting among other things "that no defendants other than themselves have been effectively served herein and none has appeared, and therefore any allegations with respect to such individuals are not relevant to the cause herein set forth" (R. 127).[17]

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[16] On September 19, 1946, the United States Attorney, on behalf of the defendants, moved to strike certain matters from the amended complaint (R. 125).

[17] On September 30, 1946, an order was entered appointing guardian *ad litem* as to certain additional plaintiffs alleged to be mentally incompetent; receipt of which was signed by an Assistant United States Attorney, on behalf of the Attorney General and United States Attorney, as "Attorneys for Defendants" (R. 138–139) and on October 10, 1946, a motion to strike certain matters from the answer was filed on behalf of the plaintiffs (R. 139–142).

At this juncture the parties filed cross motions for summary judgment (R. 142–146; 146–147).[18] These motions were supported by affidavits which comprise the largest part of the printed record herein (R. 147–408).[19]

The District Court, not having reached decision on the merits on the cross motions for summary judgment, the parties on October 10, 1947, entered into a stipulation (R. 408 (a)–(b)) closing proofs and submitting the case for decision on the merits on the basis of the record as it then stood, with provision, however, that if the Court deemed it necessary for a proper decision of any factual or legal issue or issues as to any plaintiff or plaintiffs the Court might order the production of further or additional evidence thereon and, in such an event, the parties should have

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[18] Acknowledgment of receipt of plaintiffs' motion was similarly signed by an Assistant United States Attorney on behalf of the Attorney General and United States Attorney as "Attorneys for Defendants" (R. 143–144) as were numerous subsequent acknowledgments, special reference to which will not hereafter be made.

[19] Interspersed between the affidavits in the printed record are an order joining additional parties as plaintiffs dated November 18, 1946 (R. 221–222); a praecipe filed on behalf of plaintiffs requesting the Clerk to note defaults on the part of two defendants, Raymond R. Best, Project Director, Tule Lake Center, and Dillon S. Myer, Director of the War Relocation Authority, stating that each of them had entered an appearance but had failed to file a responsive pleading (R. 222); a statement on behalf of plaintiffs of objections and exceptions to affidavits filed by defendants (R. 318–324); plaintiffs' objections and exceptions to evidence, motion to strike same, and motion to suppress evidence illegally obtained (R. 397–401); and a consent and order reassigning the case from Judge St. Shure to Judge Goodman (R. 402).

the same rights in respect of introduction of such further or additional evidence as to any such plaintiff or plaintiffs as they would have had if they had not entered into the stipulation. The Court so ordered on the same day (R. 408 (b)).[20]

On April 29, 1948, the District Court entered an opinion and order (R. 410–427) holding (at R. 426) that upon "the basis of the class showing made by plaintiffs, equity and justice require the entry of an interlocutory decree cancelling the renunciations and declaring plaintiffs to be citizens of the United States." The Court, however, further held and ordered as follows (R. 426–427):

> It may be that if the defendants were to go forward with further proof, they could present evidence that certain of the plaintiffs individually acted freely and voluntarily despite the present record facts. Therefore, it is further ordered that defendants may have 90 days from date hereof within which to file a designation of any of the plaintiffs concerning whom they desire to present further evidence. As to any plaintiff, not so designated by the defendants within the time specified, a final decree may enter. As to any plaintiff designated in the manner and within the time specified, further hearings, after notice duly given, will be held.

Following this opinion and order, numerous additional plaintiffs were joined in the suit and extensions of time were granted for the filing of the designation

[20] On the same day the District Court entered an order correcting the names of certain parties pursuant to stipulation (R. 409).

of plaintiffs as to whom the defendants wish to introduce additional evidence.[21]

On July 27, 1948, the defendants filed a motion to dismiss the action as to 609 named plaintiffs, who had become parties to the suit subsequent to the cancellation of their removal orders and consequent release from custody, upon the ground that they were not, as of the time of joining the suit, being deprived of any right or privilege of citizenship by any of the defendants within the meaning of 8 U. S. C. 903, and that no case or controversy over which the Court had jurisdiction had been shown to exist between them and any of the defendants. On August 16, 1948, the District Court entered its order denying this motion.[22] Thereafter the Court entered orders over the opposition of the defendants permitting the joinder of 1,947 additional plaintiffs, making a total of 2,556 persons permitted to become parties to the suit after they had been released from custody pursuant to the mitigation hearings above mentioned.[23] These additions brought the total number of plaintiffs to 4,315.

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[21] The stipulations and orders permitting the joining of additional plaintiffs were omitted from the printed record. Orders extending the time for filing of the designation appear at R. 427–428.

[22] This motion, the ~~defendants~~ plaintiffs' opposition thereto on the ground that the Attorney General's approval of plaintiffs' renunciations constituted a denial of the rights of citizenship, etc., and the Court's order of August 16, 1948, denying the defendants' motion to dismiss, have been omitted from the printed records. Copies of the motion and supporting affidavit, with most of the names deleted, are set forth in Appendix D, *infra*.

[23] The Court's order of August 23, 1948, joined 1,797 additional plaintiffs; its order of September 20, 1948, joined an additional

On September 27, 1948, the District Court entered an interlocutory order, judgment and decree (R. 430–437) which held, in effect, that all plaintiffs not designated by the defendants for the introduction of additional evidence were to be deemed to be citizens of the United States and granted full relief and that the defendants should have the burden of proof as to all issues concerning those that they did designate. This order granted the defendants an additional 120 days within which to file such designation.

Thereafter on January 25, 1949, the District Court entered an order extending the defendants' time in which to file its designation until February 25, 1949 (R. 438). As shown by the affidavits of counsel for both the plaintiffs and the defendants herein, this order was entered after a conference between them and the District Judge at which the nature of the designation to be filed by the defendants was discussed.[24]

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138 plaintiffs; and its order of September 27, 1948, joined an additional 12 plaintiffs. These orders, the motions upon which they were based, and the oppositions thereto have been omitted from the printed record. On the last mentioned date the Court entered also an order discharging the guardian *ad litem* as to the minor plaintiffs who had reached their majority (R. 429).

[24] The portion of the affidavit of Wayne S. Collins, Esq., bearing upon this subject is set forth at R. 449. The understanding of Paul J. Grumbly, Esq., as to the conference is shown in an affidavit by him and in a letter written by him to the Attorney General the day after the conference which are set forth in Appendix B to this brief, *infra*. (This affidavit and copy of the letter are omitted from the printed record pursuant to a stipulation and order of this Court filed herein on July 6, 1949, permitting these papers, which are exhibits to the defendants' return to the Court's order to show cause, to be referred to without printing.)

Although there is dispute as to the representations made by defendants' counsel at the conference, it may fairly be inferred from the record that the District Judge expressed a hope that the Department of Justice, in designating plaintiffs for additional proof, would do so with a view to the interests of justice and the crowded condition of the trial calendar of the District Court. We believe that it may not properly be inferred, however, that the District Judge intimated that his opinion and order of April 29, 1948, *supra,* and his interlocutory order of September 27, 1948, *supra,* might not properly be understood by the defendants as rulings to the effect that, on the evidence as it then stood, the plaintiffs had made out a *prima facie* case casting the burden upon the defendants to come forward with additional evidence in respect of all plaintiffs as to whom the defendants felt that they could make out a reasonable defense.

The defendants' designation of plaintiffs as to whom they wished to introduce additional evidence (Appendix A, *infra*)[25] was filed herein on February 25, 1949 (see R. 442). This designation was forwarded to the United States Attorney from the Department of Justice at Washington with a letter

[25] Pursuant to the stipulation and order filed in this Court on July 6, 1949, the above-mentioned designation of plaintiffs was omitted from the printed record. It is set forth in Appendix A to this brief, *infra*, in full with the exception that most of the names of the plaintiffs have been deleted with bracketed notations as to the omissions. Included, also, within the brackets, are references to certain changes thereafter made by supplemental pleadings which were necessitated by the fact that the survey upon which the designations were based was not complete as of the time that the filing of the designation was required.

dated February 23, 1949, which was brought to the attention of the District Court,[26] which, in effect, pointed out that while the designation included the vast majority of the plaintiffs named in the suit, that did not necessarily mean that all such individual cases had to be tried. The designation (Appendix A, *infra*) grouped the plaintiffs in categories as to which offers of proof were made and suggested that "in scheduling cases for trial, it should be remembered that a final judicial determination of the case of one plaintiff listed in a particular exhibit attached hereto, may prove dispositive of the cases of all or most of the plaintiffs listed in the same exhibit; therefore, it is probable that much time and effort will be saved by postponing the trial of all but one or two cases listed in a particular exhibit until after final judicial action has been taken in the cases selected for trial." The accompanying letter pointed out that two appeals in such cases were then pending in this Court (*Clark* v. *Inouye,* 175 F. 2d 740; *Acheson* v. *Murakami,* 176 F. 2d 953) and instructed the United States Attorney to assure the District Judge that

> in our view, at least as strong a case can be made out for sustaining the validity of the renunciations here as was made in the cases now on appeal from the decisions of the District

[26] Pursuant to the above-mentioned stipulation and order filed in this Court on June 27, 1949, this letter also has not been printed but appears in Appendix B to this brief, *infra*, as an exhibit to the defendants' return filed March 7, 1949. This letter is quoted in part in the Court's order of March 23, 1949, at R. 456–457.

Court for the Southern District of California. In view of that fact and in view of Judge Goodman's opinion in the instant cases, the Attorney General feels that he cannot properly concede that the renunciations of any of the designated plaintiffs were involuntary as a matter of fact or law. He, of course, reserves the right to take a different position in the event that the decisions now on appeal should be sustained." (R. 456–457.)

The letter, in effect, also suggested that insofar as the cases of designated plaintiffs would probably be covered by the decision of the cases then pending on appeal, it would be desirable, as a practical matter, to avoid trials until such decisions had been reached. It was further suggested that, indeed, it was within the realm of possibility "that the final decisions of the cases on appeal will render any further proceedings unnecessary" (ibid.).

On February 28, 1949, the plaintiffs filed a motion to strike the designation of plaintiffs (R. 442–444) and the Court entered an order requiring the defendants to show cause why the same should not be stricken (R. 439–440).[27] Thereafter, the defendants

[27] On March 4, 1949, there were filed a stipulation and order discharging guardian *ad litem* as to plaintiffs who had become adult during the pendency of the suit (R. 451–452) and an order appointing a guardian *ad litem* as to certain plaintiffs expressly conceded in the designation to have been mentally incompetent and as to whom no evidence would be introduced (R. 453). On March 21, 1949, a stipulation and order were filed amending the complaint and pleadings to substitute the names of certain officers for the names of their predecessors as parties defendant (R. 454).

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filed their return (Appendix B, *infra*) and supplemental return (Appendix C, *infra*) to the Court's order to show cause.[28] On March 23, 1949, the District Court entered its order striking the defendants' designation of plaintiffs (R. 455–460).

On April 12, 1949, the District Court entered its findings of fact and conclusions of law (R. 460–480) and its final order, judgment and decree herein (R. 481–484). On April 26, 1949, the defendants filed their notice of appeal (R. 488) and a motion to suspend the injunctions granted in the Court's judgment during the pendency of such appeal (R. 485–486). In such motion the defendants pointed out that 1,480 plaintiffs (in both cases) are now in Japan and under the terms of the injunction might return to the United States if the injunction was permitted to operate while the appeal was pending. On May 2, 1949, the Court entered its order modifying the final order, judgment and decree (R. 498) by providing that it would not affect the exercise of the authority and powers conferred upon the Secretary of State and his representatives "pursuant to 8 U. S. C. 903 with respect to persons abroad claiming United States nationality or citizenship."

Subsequent to the defendants' filing of their notice of appeal (R. 488), certain of the plaintiffs filed voluntary dismissals in this cause. A supplemental

[28] These pleadings are omitted from the printing pursuant to the stipulation and order filed in this Court on July 6, 1949, *supra.*

record including these dismissals has been requested from the Clerk of the District Court, and this Court is requested to take notice of them in connection with certain contentions hereinafter advanced in this brief.

Specification of errors relied upon

The District Court erred:

1. In entering its opinion and order herein on April 29, 1948 (R. 410–427), which, in effect, held that on the basis of the evidence then before the court "equity and justice require the entry of an interlocutory decree cancelling the renunciations and declaring plaintiffs to be citizens of the United States" (R. 426), and in holding and ordering therein that in order to avoid such decree it would be necessary for the defendants to designate plaintiffs as to whom it would introduce additional evidence (R. 426–427).[28a]

2. In entering its interlocutory order, judgment and decree herein on September 27, 1948 (R. 430–437),

[28a] This ruling was erroneous in that the plaintiffs had introduced no evidence tending to prove that *all* renunciations at the Tule Lake Segregation Center were involuntary products of the coercive influences found to have existed at that center, nor had they introduced any evidence tending to prove that their individual acts of renunciation were coerced. The Court's conclusion (R. 426) that the "government of the United States under the stress and necessity of national defense, committed error in accepting the renunciations of the greater number of the plaintiffs herein," even if true, was an insufficient reason for holding that all the plaintiffs were to be presumed to have renounced their citizenship involuntarily unless the defendants produced evidence to the contrary.

for the reasons above mentioned and for the further reason that the court thereby expressly placed upon the defendants "the burden of proof * * * to prove that the renunciation of each such plaintiff * * * was wholly voluntary, uncoerced, and uncompelled and was of the free will, choice, desire and agency of such plaintiff and was neither caused by nor affected by the duress, menace, coercion, intimidation, fraud, or undue influence in which he or she was held and subjected to" (R. 432).[28b]

3. In entering its order striking defendants' designation of plaintiffs herein on March 23, 1949 (R. 455–460), wherein the Court found that the offers of proof made in the defendants' said designation and supplemental pleadings (see Appendix A–C, *infra*) by which the defendants offered to introduce the documents and transcripts of hearing concerning the individual renunciations of the plaintiffs, all tending to prove that the renunciations were of their own free will and accord and were desired by them, and further to introduce documentary evidence tending to prove that actions taken by plaintiffs which were consistent with voluntary renunciation of their citizenship, had

[28b] It was improper to shift the burden of proof to the defendants negativing allegations made by plaintiffs as to which no direct evidence, and certainly not the best evidence, had been introduced. Particularly is this true since the issue concerned the individual state of mind of the particular plaintiffs, as to which the defendants could produce, at best, only circumstantial evidence.

no "competency, relevancy, or materiality to any issue or any bearing on any issue not heretofore decided by this Court or to any new issue of fact or proof against a plaintiff or plaintiffs; that the "general offer of proof" contained therein relates to and covers offered matters of proof or factual issues which heretofore were considered and decided by this Court in favor of the plaintiffs and against the defendants" (R. 457–458).[28c]

4. In entering its findings of fact and conclusions of law herein on April 12, 1949 (R. 460–480) in that the same do not comply with rule 52 (a) of the Federal Rules of Civil Procedure, either in form or substance.[28d]

[28c] This order was erroneous for each of the reasons set forth in paragraphs 1 and 2 above and for the further reason that in practical effect it amounted to a decision that one seeking judicial relief from the consequences of his own actions upon the ground that they were coerced need prove only that there were coercive influences which might have compelled his action but without introducing any evidence tending to prove that they actually did so.

[28d] The Court did not find the facts specially but instead found that various numbered paragraphs of pleadings contained true or false statements, which statements can be ascertained only by actually turning to the pleadings, and interweaving into such findings statements of fact, or in such a way that it is impossible to ascertain from a reading of the findings alone the facts believed by the Court to sustain the judgment herein. Such findings, which were prepared by the plaintiffs herein (see R. 459), are in such form as to place a serious and unnecessary burden upon the District Court and upon this Court, and therefore to lead to doubt that they represent an adequate expression of the convictions of

5. In its finding of fact No. 1 as to the first cause of action (R. 461) and in finding No. 1 at (R. 468), to the effect that it had jurisdiction to entertain the suit by virtue of the provisions of Title 28, U. S. C., § 41 (1) [now § 1331], 8 U. S. C., § 903 and 28 U. S. C., § 400 [now § 2201], in that the same are conclusions of law, and, if they be deemed findings of fact, for each of the reasons stated in Point I of the Argument, *infra*.

6. In its findings No. 1 at (R. 461) and No. 2 at (R. 478), that defendants other than Clark, Hennessy, and Wixon appealed so as to authorize the entry of judgment against them, for each of the reasons set forth in Point I of the Argument, *infra*.

7. In its findings No. 1 at (R. 461) and No. 3 at (R. 469) that each of the plaintiffs was at the time of the institution of suit and prior thereto a loyal citizen of the United States; that none is an alien enemy or citizen or subject of Japan and that the revocation, by Major General H. Pratt, of the Civilian Exclusion Orders, was an official executive finding that none of these plaintiffs was hostile or dangerous to the United States; and declaring that any finding by the Attorney General to the effect that any of such plaintiffs have been or were dangerous to the

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the District Court. Cf. *United States* v. *Forness*, C. A. 2, 125 F. 2d 928. Such findings are further defective in that they are confusing, repetitious and frequently immaterial. They are moreover replete with legal conclusions and extravagant and misleading phraseology. Cf. *Brooks Bros.* v. *Brooks Clothing* (S. D. Cal.), 5 F. R. D. 14.

United States is not true. These findings are erroneous in that they beg the legal question herein and are immaterial if plaintiffs, in fact, are citizens. If such plaintiffs, as were dual nationals prior to their renunciations are held to have renounced effectually, and are therefore alien enemies, the Court was without authority to review the determination of the Attorney General, pusuant to the Alien Enemy Act, that such plaintiffs were dangerous. With reference to the conclusion that the revocation of the Civilian Exclusion Orders constituted a finding that plaintiffs were not hostile or dangerous, the finding is erroneous for the further reason that such revocation plainly was not such a finding, no evidence tends to prove that it was intended so to be, and the finding is contrary to the evidence (see R. 196–198; *The Spoilage,* p. 334 n). Furthermore, the defendants offered to prove herein that most of the plaintiffs were segregated at the Tule Lake Center because they had applied for repatriation or expatriation to Japan previously or had given a negative answer or refused to answer a question as to their loyalty to the United States, or had been denied leave clearance for security reasons; and that while there, many of them had been leaders and members of pro-Japanese organizations and that many, subsequent to renunciation, had voluntarily gone to Japan (see Appendix I, *infra*).

8. In its findings No. 2 at (R. 461) and No. 5 at (R. 469–470), that plaintiffs were excluded and detained

solely because of their Japanese lineage and in violation of their rights, liberties, privileges, and immunities as citizens of the United States; and that the government thereby falsly branded them as disloyal and wrongfully attempted to repudiate them as citizens. These findings are primarily erroneous in that they constitute conclusions of law. Moreover, the findings are contrary to the decision of the Supreme Court of the United States in the case of *Korematsu* v. *United States,* 323 U. S. 214, 223.

9. In its findings No. 3 at (R. 461–462) and No. 6 at (R. 470–471) and Nos. 2 and 3 at (R. 476) that the renunciation hearings were wanting in fairness and impartiality and deprived each plaintiff of due process of law; and that despite the fact that the purpose of the hearings was to ensure against involuntary renunciation of citizenship, that none of the plaintiffs understood the consequences of their acts and none renounced voluntarily; that parties were held and subjected to duress by the government, its agents, and the defendants, which duress was incidental to the duress of terroristic groups and individuals operating at Tule Lake, all of which was known to the Attorney General and his hearing officers at such time; and that each plaintiff in executing his or her renunciation and in attending and being subjected to such hearings was not a free agent but was acting involuntarily under compulsion of governmental

duress or private duress which was an incident thereto. Having concluded that the renunciation hearings were not required by law, the Court rendered its criticism of them immaterial. The findings insofar as they relate to involuntary action on the part of each of the plaintiffs are plainly erroneous. There is no evidence of record to the effect that *none* of the renunciations was voluntary. While there is ample evidence to indicate that a number of the renunciations were influenced by factors rendering them involuntary within the meaning of this Court's decision in the case of *Acheson* v. *Murakami,* 176 F. 2d 953, there is a complete lack of evidence that any individual named as a plaintiff in this cause actually renounced his citizenship involuntarily as a consequence of any such influences. Such finding could be sustained only upon evidence that *all* renunciations at the Tule Lake Center were involuntary and no evidence so indicates; the opinion of the District Court is expressly to the contrary (R. 415, 422, 426–427) and the defendants offered to prove that many of the plaintiffs were pro-Japanese group leaders, some of them Kiebi, who voluntarily repatriated to Japan after renouncing their citizenship, at the close of hostilities, and, moreover, that a number of plaintiffs were not even at the Tule Lake Segregation Center when they renounced their citizenship (see Appendix I, *infra*).

10. In its findings No. 4 at R. 462 and No. 7 at R. 471 that each of the plaintiffs was held in duress by the defendants, for the reasons stated in paragraph 9 just above.

11. In its findings No. 5 at R. 462 and No. 8 at R. 471 that there was a complete lack of constitutional authority for United States administrative, executive, and military officers to detain the plaintiffs; that they were held in duress and subjected to duress when so detained from the time of their evacuation to the time of their release and that said things invalidated and voided each of the renunciations executed by the plaintiffs. These findings are erroneous in that they are primarily conclusions of law and are further erroneous for the reasons stated by the Court below in its opinion (R. 415 (n)). These findings are further erroneous, even assuming the Court's conclusion that the plaintiffs were unlawfully detained, and that any renunciation while under unlawful detention is void, for the further reason that the record plainly shows that most renunciations occurred after the decision of the Supreme Court in the case of *Ex parte Endo,* 323 U. S. 283, and after the lifting of any restraint upon their departure from the centers and no evidence shows that any of the plaintiffs renounced his citizenship or even applied to do so prior to the lifting of such restraints. (While it may be assumed that most of the plaintiffs who were pro-Japanese organization leaders applied to renounce prior to December 20, 1944, it does not necessarily

follow that all of them did so since the evidence indicates that new leaders were selected to replace old ones as soon as the old ones were permitted to renounce and were removed to alien enemy internment camps. (See e. g., *The Spoilage,* p. 340 *et seq.*)

12. In its finding No. 1 at R. 463 reiterating by reference its findings 1 through 4 (R. 461–462) for the reasons heretofore given with reference to such earlier findings.

13. In its finding No. 2 at R. 463, its amplification of findings at R. 466, and in its finding No. 2 at R. 472 that the renunciation of each plaintiff was neither free nor voluntary but was compelled and was coerced, was caused by and was a direct and approximate result of the duress in which each plaintiff was held and subjected by the United States Government and the defendants and the incidental concurrent duress, menace, coercion, intimidation, fraud, and undue influence to which each was subjected and which was exerted upon each plaintiff by groups and individual internees likewise detained, for the reasons heretofore set forth in these Exceptions in paragraph 9, *supra.* These findings are substantially repetitious of the findings there discussed.

14. In its findings No. 3 at R. 463 and No. 3 at R. 472–473, the plaintiffs were unlawfully and unconstitutionally imprisoned by the United States Government acting by and through the War Relocation Authority; and the finding that the War Relocation

Authority demanded of the plaintiffs a false admission of prior allegiance to Japan and upon refusal of any of them to make an admission, the incarceration of such persons at Tule Lake for an indefinite period of time; and in holding that the War Relocation Authority falsely branded each plaintiff as disloyal and hostile to the United States; and holding that plaintiffs have been continuously deprived of all their rights of national and state citizenship; that in 1942 it classified plaintiffs as being alien enemies; that because in 1942 plaintiffs were not allowed to perform military service for this nation and because of being fingerprinted and photographed they were led to believe and feared that they would be deported to Japan and that if they did not first relinquish United States nationality, they would be, upon arrival in Japan, mistreated as being persons hostile to Japan; that the War Relocation Authority incarcerated innocent citizens without accusation of wrongdoing in a special jail termed "The Stockade"; and that incarceration of plaintiffs in the stockade was a phase of governmental duress; in holding that the maintenance of a recreation club and its method of operation by the War Relocation Authority where internees worked at a nominal salary was a part of the governmental system of duress; that hearings conducted during January and February of 1946 by the Attorney General for the purpose of determining who should or should not be deported to Japan were arbitrary, unreasonable, and oppressive in character and deprived plaintiffs of due process of law and that

the same constituted a phase of governmental duress; that subsequent to such hearings the War Relocation Authority denied plaintiffs a right to counsel and the posting of censors to listen to consultation with their counsel in connection with this suit was a part of governmental duress; that the War Relocation Authority by allowing groups which the Court held to be terroristic to operate in the center, further subjected the plaintiffs to duress and intimidation which caused the said renunciations; that up until plaintiffs were released from detention the Government permitted aliens to leave the Tule Lake center while it held their children to signed renunciation applications for involuntary removal to Japan and compelled relocated members of their families to a choice of an involuntary exile from the United States to Japan to accompany them to preserve a family unity or to remain in the United States, separated from them. These findings are erroneous in the following particulars:

(a) The finding that plaintiffs were unlawfully and unconstitutionally imprisoned is a conclusion of law.

(b) The finding that WRA demanded of the plaintiffs a false admission of prior allegiance to Japan, etc., presumably relates to Question 28 of the registration form which WRA promulgated in an effort to expedite leave clearances (see p. 14, *supra*) and if so the record certainly contains no justification for this description of that event. Moreover, we submit, that in view of the well known fact that a large per-

centage of Kibei and Nisei were dual nationals and since there was no ready means whereby the government officials could determine which of them did owe allegiance to the Japanese Emperor, it was not unreasonable for them to conclude that they could not forego the portion of the question relating to the foreswearing of allegiance to the Emperor. The implications of the finding are, moreover, contrary to the evidence (see, e. g., T & N 79–81).

(c) The finding that WRA falsely branded plaintiffs as disloyal to the United States presumably refers to their segregation for having previously requested repatriation to Japan, for having refused to swear unqualified allegiance to the United States or, in a few cases, having been denied leave clearance on security grounds (see pp. 14–17, *supra*). If so, the facts, we submit, speak for themselves. See, also, *Korematsu* v. *United States,* 323 U. S. 214–219, indicating that it was not unreasonable to consider such acts as evidence of disloyalty to the United States.

(d) The finding that plaintiffs were deprived of *all* rights of citizenship is unsupported by the record and, moreover, is refuted by the fact of this and prior litigation. Moreover, as stated above, most renunciations did not occur until after the decision of *Ex parte Endo, supra,* and the revocation of the leave clearance procedures and the announcement that the centers would soon be closed.

(e) There is no evidence that plaintiffs were classified as alien enemies by anyone prior to their renunciations.

(f) There is no evidence that *all* the plaintiffs believed that they would be deported to Japan and that if they did not first relinquish United States nationality, they would be mistreated there. The affidavit of Testsujiro Nakamura (R. 235–236) that he talked with in excess of 3,000 persons scheduled for renunciation hearings and that without exception each person repeated to him the identical reasons for renunciation, even if true, does not identify any plaintiff herein as having stated such reasons. Moreover, as stated in *O'Laughlin* v. *Helvering,* 81 F. 2d 269, 271, " 'it is a wild conceit that any court of justice is bound by mere swearing; it is the swearing credibly that is to conclude its judgment.' * * * [this] testimony * * * is, to speak frankly, wholly unbelievable."

(g) The reference to the "Stockade" in the above findings appears to relate to the statements made in Chapter XI of *The Spoilage.* We submit that neither from this, nor any other evidence of record, can it properly be inferred that "The Stockade" was instituted by WRA to instill in the plaintiffs fear of the Government or that the same was a phase of governmental duress. We submit, also, that no competent evidence supports the finding that WRA incarcerated innocent citizens without accusation of wrongdoing "in the stockade."

(h) The Court's holding that the maintenance and operation of the recreation club at Tule Lake where internees worked at a nominal salary was a part of

the Government's systematic program of duress is not supported by any evidence that the club was a government institution or that any evacuee worked at such club other than on a voluntary basis (see R. 105–106; 131–132).

(i) The holding that the mitigation hearings conducted by the Attorney General (which incidentally resulted in the release of all but 300 of the present plaintiffs) were arbitrary, unreasonable, and oppressive in character and deprived the plaintiffs of due process of law, obviously proceed from the question begging assumption that the renunciations were void and the alien enemy removal orders therefore invalid. Nothing in the record suggests that such hearings were any different from any other alien enemy mitigation hearings, the validity of which has been consistently upheld by the courts. Moreover, since these hearings occurred after the renunciations, the finding is irrelevant.

(j) The findings that WRA denied plaintiffs their right to counsel and posted censors to attend and listen to consultation between plaintiffs and their counsel in connection with this proceeding are contradictory. Moreover, since they relate to a time subsequent to the renunciations they are irrelevant.

(k) The finding that *all* plaintiffs were influenced to renounce their citizenship by the activities of the pro-Japanese organizations at Tule Lake finds no support in the record and moreover the defendants alleged (R. 136) and offered to prove that numerous plaintiffs were, themselves, leaders and members of

such organizations and, indeed, that a number of the plaintiffs were not even at Tule Lake at the time of their renunciations (Appendix A, *infra*).

(1) The finding that the Government made it a practice to permit aliens to leave Tule Lake center and return to their former homes in this country while holding their children who had signed renunciation *applications,* if literally intended, we submit, proves too much for the plaintiffs. Regardless of fears of hostility of the Caucasian population outside the centers, we suggest that it would be a strange child that would persist in renouncing his citizenship in these circumstances. If the finding was intended to mean that some renunciants were held after their parents had been released, it is obviously irrelevant since such fact could have had nothing to do with renunciation.

15. In its findings of fact No. 4 at R. 463 and No. 2 at R. 472, and in its amplification of findings at R. 467, in finding that the plaintiffs were led to believe and fear that the signing of renunciation applications was a matter of demand by the government, compliance with which was a prerequisite to their right and that of their families to remain united and remain in the protective security of said center pending such banishment; in finding that *all* plaintiffs thought renunciation was necessary to save themselves and their families from physical harm and violence which was reigning in civilian communities hostile to persons of Japanese ancestry; and finding that by reason of

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governmental duress and duress of organized terroristic groups plaintiffs were kept in a state of hysterics and terror and deprived of their freedom of will and choice in signing their applications for renunciations and in finding that the plaintiffs were compelled by the Government to sign a fictitious renunciation of citizenship against their will and desire. No evidence supports these findings as to *all* these plaintiffs, nor does any evidence support such findings as to *any* individual plaintiff herein. In view of our acceptance of this Court's decision in the *Murakami* case, we do not suggest that the activities of pro-Japanese groups and the fears of the hostility of the Caucasian population outside of the centers had no influence upon the renunciations of many evacuees. However, there is abundant evidence that other factors accounted for many renunciations (see Point II of Argument, *infra*). The incredible nature of the affidavit of *Nakamura* (R. 235–236), which will apparently be relied upon in support of these findings has been commented upon in paragraph 14, *supra*. Moreover, even that affidavit falls far short of proving that all plaintiffs were so affected.

In any event, the defendants offered to prove that the majority of the plaintiffs applied for repatriation to Japan prior to their segregation at Tule Lake, that many of them were pro-Japanese organization leaders and that some of them were not even at the Tule Lake Center when they renounced their citizenship (see Appendix A, *infra*).

16. In its findings of fact No. 4 at R. 467, No. 4 at R. 473, No. 4 at R. 477 and in its amplification of find-

ings at R. 467, in finding that pro-Japanese organizations at Tule Lake engaged in spreading pro-Japanese nationalistic propaganda in a terroristic manner with full knowledge and consent of government authorities, namely, the WRA; and that a large number of plaintiffs asserted their belief in the principles of and purposes of such organizations before the renunciation hearing officers as a result of governmental and individual duress. While it was admitted (R. 132) that WRA permitted the operation of Japanese language schools and cultural activities therein and that some of the organizations and leaders thereof were adherents of Japanese philosophy, there is no evidence that WRA had full knowledge of and consented to alleged terroristic methods used by such organizations to induce renunciations. It is, of course, true that many of the plaintiffs asserted their loyalty to Japan and the adherence to the principles of the pro-Japanese organizations when they appeared before the renunciation hearing officers. However, no evidence in this record supports a finding that any individual plaintiff that made such representations did so falsely, or because he was afraid not to do so. The defendants have offered to prove that many of the plaintiffs were pro-Japanese organization leaders (Appendix A, *infra*) and, certainly, any such finding as to them would be absurd.

17. In its findings of fact No. 4 at R. 463, and No. 4 at R. 473, and No. 4 at R. 476–477, in finding that pro-Japanese organizations at Tule Lake threatened all renunciants prior to renunciations; that the United

States Government regarded them as alien enemies and that it had scheduled them and their families for deportation to Japan; the government by announcement prior to the renunciation hearings in 1945 threatened the deportation of each party and that of alien members of his or her family on an exchange ship; that the pro-Japanese organizations threatened all the plaintiffs that if any of them succeeded in being relocated in civilian walks of life in this country their lives would be placed in jeopardy because of community prejudice; that the pro-Japanese organizations coerced all the plaintiffs into signing the renunciation applications by threatening against their lives and by threats of inflicting great physical injury upon them and members of their families in the event that he or she failed to obey their mandate to sign such renunciation applications. There is no evidence of record that *all* the plaintiffs to this suit or that any individual plaintiff in this suit believed the propaganda of such organizations nor that such organizations by threats forced *all* of the plaintiffs or any individual plaintiff in this action to renounce his citizenship. Moreover, as previously stated, the defendants offered to prove that many of the plaintiffs were pro-Japanese organization leaders and that some of them were not at the Tule Lake Center at the time of their renunciation (Appendix A, *infra*).

18. In its findings No. 4 at R. 463–464 and No. 5 at R. 473–474, that although it did not consider and

give weight to the letter of Abe Fortas as a pleading herein, the statements contained in said letter were true and correct. If this finding is intended to incorporate the language of the letter as a finding of the Court, it is more temperate, we submit, than some of the previous findings but equally erroneous for the same reasons. If the finding is intended to invoke the letter as evidence, we submit that it is plainly hearsay (see R. 194–195) and thus excluded by stipulation (R. 408–a).

19. In its findings No. 4 at R. 463 and No. 2 at R. 472, that each plaintiff renounced his citizenship unwillingly because of threats of terroristic groups to do physical harm to him or his family which threats compelled him to renounce, for the reasons stated in paragraph 17 of these specifications, *supra*.*

* This finding appears to be based upon the affidavit of Nakamura, at R. 236–237, which has been commented upon, *supra*. Upon close examination it will be found that the affidavit does not state that affiant was told that threats were actually made against persons with whom he talked if they did not renounce, but rather that such persons told him that they would be subjected to violence by the pressure groups which had previously threatened them in a different connection. Apart from the inherent incredibility of this long recital attributed to each of more than 3,000 persons, as above pointed out, there is the additional fact that not one of the plaintiffs is identified as a person that made any such statement to the affiant. While there is indication that resort was had to violence and threats by the pro-Japanese organizations in connection with elimination of opposition to their activities and in the solicitation of membership, so far as we have been able to ascertain there is no evidence whatsoever in this record that any renunciant was actually threatened with violence if he failed to renounce his citizenship. The evidence is to the contrary (R. 189, 191–192, 396).

20. In its findings No. 4 at R. 463 and No. 6 at R. 474, and set forth in its amplification of findings at R. 467–468, that the United States Government and its agents in charge of the Tule Lake center, and the Attorney General and his agents, were aware of the duress, menace, fraud, coercion, and intimidation of all the plaintiffs by the pro-Japanese organizations but condoned the same and actually aided and abetted the same. Insofar as WRA is concerned, the objection to this finding is set forth in paragraph 16 of this specification, *supra,* to which reference is respectfully made. Insofar as the Attorney General and his representatives are concerned the finding is absurd.*

Moreover, as stated by the Supreme Court in *Bilokumsky* v. *Tod*, 263 U. S. 149, 153–154, "silence is often evidence of the most persuasive character." We submit that had any of the plaintiffs actually been threatened with physical violence if he did not renounce, there would be no difficulty in finding clear evidence of that fact in the record.

* It is clear from the record that the Department of Justice had no knowledge as to the existence of the pro-Japanese organizations until December 5, 1944 (R. 163–164, 165–166). It immediately proceeded to consider the applications for renunciation of the leaders of the organization for the purpose of removing them to alien enemy internment camps in order to cause the organizations to be dissolved (R. 168–170). The leaders were removed to an alien enemy camp on December 27, 1944 (R. 180; T. & N. 339). The organization leaders were immediately replaced by new officers (R. 180) and intensified their nationalistic activities and issued copious propaganda literature (T. & N. 340). On January 24, the Department of Justice published an open letter to the organizations condemning their activities and ordering them to cease (T. & N. 356). On January 26, the second group of organization officers was removed

21. In its finding No. 4 at R. 463, No. 7 at R. 474, and No. 5 at R. 477, that each of the plaintiffs and all renunciants, as a direct and proximate result of governmental duress and private duress, renounced his and their citizenship, for the reasons hereinabove often reiterated that there is no evidence that any of the plaintiffs renounced his citizenship for either of such reasons and there is abundant evidence that many renunciations were for different reasons, e. g., loyalty to Japan (T. & N. 340–341).*

22. In its finding No. 4 at R. 463, in its amplification of findings at R. 466, in its finding No. 8 at R. 474, and in its finding No. 6 at R. 279 in reiterating that each of the plaintiffs renounced because of duress, menace, fraud, and undue influence; in finding that as to the number of plaintiffs who did not attempt to retract their renunciations until after the atom bomb fell on Japan, the knowledge of such fact was not a positive factor in their said retractions. As

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(T. & N. 356) which removals continued through March 4, 1945 (T. & N. 357) when the last of those considered by the Department of Justice to be troublemakers were interned (R. 191). These three removals included the entire membership of the militant young men's organization (R. 183). There is no evidence in this record to the contrary. This finding is clearly erroneous.

* Moreover, the defendants have offered to prove that most of the plaintiffs applied for repatriation to Japan prior to the renunciation at Tule Lake (Appendix A, *infra*) and the District Court itself has stated its opinion that fear "that they would be subject to reprisals on arrival in Japan" if they did not renounce, was a factor which led to renunciations (R. 416). The fear of deportation mentioned in the Court's opinion could hardly have been a factor in the thinking of those who were actively seeking repatriation.

to the Court's findings of duress, menace, fraud, and undue influence, reference is made to the reasons set forth in paragraph 21 just above and in earlier paragraphs. The record contains no evidence concerning the effect of the explosion of the first bomb upon the thinking of the renunciants beyond the fact that very few had written to the Department of Justice indicating a desire to withdraw their renunciations prior to that event (R. 192). No evidence supports the Court's finding denying the inference that may properly be drawn from that fact.

23. In its finding No. 5 at R. 464 and No. 9 at R. 474, in concluding that the Attorney General had power to accept revocations of renunciations, the said renunciations having been void, illegal, and invalid, for the reason that such finding is clearly a conclusion of law and for the further reason that the renunciation statute (8 U. S. C., § 801 (i)) plainly does not confer any such authority on the Attorney General.*

* The fact that the Attorney General may decide that a renunciation was void in connection with a proceeding in which it is his administrative duty to determine the question of a renunciant's continued citizenship, just as a court has such power when a case or controversy properly presents such an issue to it, does not confer upon the Attorney General any more than it does upon a court the authority to set aside the prescribed consequences of an Act of Congress. True, the Attorney General was authorized to prescribe the forms and procedures whereby the renunciations could be accomplished. Also, the renunciations could not be effective until he approved them as not contrary to the interests of national defense. We believe that he had the authority to refuse to take this action upon any purported renunciation which in his opinion was not voluntary because, in order to be constitutional, the statute could only require such action in cases of voluntary renunciations. However, once his approval was given, his authority was expended under the Act.

24. In its finding No. 1 at R. 464, for the reasons heretofore set forth with respect to the Court's earlier finding referred to in such finding.

25. In its finding No. 2 at R. 464–465, in No. 1 at R. 475, and in No. 7 at R. 477–478, that several hundred plaintiffs were under legal disability of infancy; that those plaintiffs appearing by a *guardian ad litem* or next friend herein because mentally incompetent at the time they signed their applications for renunciation, did not have sufficient mental capacity to accomplish a legally binding act. Except as to the eight plaintiffs named therein, there is no evidence to support any holding that any of the plaintiffs were mentally incompetent to renounce their citizenship. It is true that the Attorney General approved the renunciations of persons 18 years of age and older and it is clear that the above finding is therefore erroneous for the reason that it constitutes a conclusion of law that such renunciations were not permitted by the statute on the part of persons under 21 years of age. As to this legal issue see Point II of the Argument, *infra.*

26. In entering its conclusions of law herein (R. 478–480) as follows: that the Court had jurisdiction over the cause and over the persons of each of the plaintiffs and each of the defendants, for the reasons set forth in Point I of the Argument, *infra;* in effect, that each of the plaintiffs renounced his citizenship involuntarily and therefore continues to be a citizen of the United States, and entitled to the

rights, privileges and immunities of such citizenship, for each of the reasons set forth in the numbered paragraphs of this Specification and in the Argument, *infra;* and that each of the plaintiffs is entitled to an injunction against each of the defendants, for the reasons set forth in paragraph 27 immediately below.

27. In entering its final order, judgment, and decree herein on April 12, 1949 (R. 482–484), holding that the renunciations of citizenship by each of the plaintiffs is void, that each is a citizen of the United States, and in enjoining each of the defendants, their agents, servants, employees, and representatives from interfering with the enjoyment of rights and privileges of such citizenship. The erroneous nature of this judgment as it relates to the Court's authority to issue it against particular defendants and in favor of the particular plaintiffs, and the failure of the record herein and the findings of fact and conclusions of law to support the judgment have been and will hereinafter be discussed. While we submit that the judgment should be reversed completely for the reasons heretofore and hereinafter stated, in the event that the Court should conclude that the judgment should not be reversed, we respectfully submit that the judgment is erroneous in that it enjoins a number of the defendants from performing acts which they have never threatened to perform and in all likelihood will never have occasion to perform. It is axiomatic that equity will not extend its relief beyond the needs of the case and particularly should this be true of the conduct of federal courts whose judicial power extends only

to actual cases or controversies. Moreover, we submit, it should not be assumed that mandatory relief will be needed if the declaration, that plaintiffs continue to be citizens, is sustained.

SUMMARY OF ARGUMENT

I. Plaintiffs relied upon § 503 of the Nationality Act of 1940 (8 U. S. C. § 903) and upon Title 28, U. S. Code §§ 1331, 1332 (conferring general jurisdiction), and §§ 2201, 2202 (Declaratory Judgment Act) in instituting this action. As to plaintiffs now remaining under alien enemy removal orders, jurisdiction is conceded insofar as the action is against the Attorney General. As to the plaintiffs who were joined after their release pursuant to the revocation of such orders, § 503 clearly did not furnish jurisdiction, since they were not then being denied a claimed right of citizenship. *Clark* v. *Inouye,* 175 F. 2d 740. As to plaintiffs who became parties while they were interned, but thereafter were released, jurisdiction disappeared as a consequence of the elimination of a case or controversy within the reach of the judicial power of the United States. As to the two latter groups, for the same reason, jurisdiction does not exist under the other statutes relied upon. Moreover, neither the general jurisdictional provisions nor the Declaratory Judgment Act conferred upon the District Court authority to entertain actions against any of the defendants officially residing outside of the territorial limits of the State of California, and in answering the complaint (as he was required to do under Section 503, *supra*) the Attor-

ney General did not impliedly subject himself to the exercise of any additional powers that the Court might have under them. The other out-of-State defendants did not consent to the jurisdiction of the court in any respect.

II. The ultimate ruling of the District Court amounts, in effect, to a decision that any person who renounced his citizenship while at a WRA Relocation Center is conclusively to be presumed to have renounced unwillingly. Even if the Court's ruling be construed as raising a *prima facie* presumption in favor of the invalidity of such renunciations, it is erroneous because no evidence was introduced tending to prove either that *all* the plaintiffs, or that *any* identified plaintiff, renounced as a result of the influences held by this Court in *Acheson* v. *Murakami,* 176 F. (2d) 953, to be coercive in nature. In any event the Court erred in placing upon the defendants the burden of proving that plaintiffs' renunciations were not coerced, or in holding, in effect, that the offers of proof made by the defendants were insufficient to off-set the *prima facie* presumption of coercion as the case may be.

III. The District Court erred in ruling that those plaintiffs who renounced their citizenship when they were over 18 but under 21 years of age, lacked mental capacity to do so, and in holding that the Nationality Act of 1940 as amended (8 U. S. C. § 801 (i)) did not authorize them to do so. The express terms of that Act and its legislative history clearly indicate that the Congress intended to lower the age of competency from 21 to 18 years generally, where acts of

acquisition or relinquishment of citizenship are concerned. In amending that act to authorize the renunciations of citizenship here in question, the Congress did so with implied reference to the legislative policy thus established. The Attorney General, who prepared the amendment, and the regulations thereunder, has so interpreted the Act. His views, accordingly, are entitled to great weight.

ARGUMENT

I

Except as to certain plaintiffs the court lacked jurisdiction over the cause and over the defendants and it lacked authority to extend the full relief granted

Paragraph I of the amended complaint herein (R. 93) asserted to the District Court that it had "original jurisdiction to entertain the suit by virtue of the provisions of Title 28, U. S. C. A., sec. 41 (1) [now §§ 1331, 1332], Title 8, U. S. C. A., sec. 903, and Title 28, U. S. C. A., sec. 400 [now §§ 2201, 2202]." In its first finding of fact (R. 461) the District Court found that the allegations of that paragraph "are true and correct." However, in its conclusions of law (R. 478) the District Court merely made the following finding with reference to its jurisdiction:

> 1. The Court has jurisdiction over the cause and over the persons of each of the plaintiffs and of each of the defendants.

To this statement should be added the following excerpt from the Court's opinion (R. 425):

> There is adequate power in equity to right the wrong done to the plaintiffs—a wrong in-

> herent in the objective of Section 801 (i) and demonstrated by the admitted circumstances of renunciation. This judicial power has never been expressly limited nor circumscribed nor has the domain in which it functions been precisely bounded. 30 C. J. S. 387 *et seq.*

This portion of the brief will take up the question of jurisdiction with reference to each of the cited statutes commencing with 8 U. S. C., § 903.

1. *Section 503 of the Nationality Act of 1940, 54 Stat. 1171 (8 U. S. C., § 903).*—To the extent relevant to the present discussion this section is as follows:

> If any person who claims a right or privilege as a national of the United States is denied such right or privilege by any department or agency, or executive official thereof, upon the ground that he is not a national of the United States, such person, regardless of whether he is within the United States or abroad, may institute an action against the head of such department or agency in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which such person claims a permanent residence, for a judgment declaring him to be a national of the United States.

It was averred in paragraph IV of the amended complaint (R. 95) and admitted in the paragraph IV of the answer (R. 128), that as of the time of the commencement of the suit the District Director of the Immigration and Naturalization Service for the Northern District of California, acting under the direction of the Attorney General, had custody over the plaintiffs who were interned and held under order

of removal from the United States issued by the Attorney General pursuant to the Alien Enemy Act of 1798, and the Presidential proclamations and the regulations of the Attorney General relative thereto. It may here be conceded that such allegation brought the Attorney General within the above-quoted statute because the plaintiffs were by this time claiming a right to be released as nationals of the United States, which right was being denied by the Department of Justice upon the ground that they were not nationals of the United States. It was believed by the Attorney General that loss of their United States citizenship was essential to their internment under the Alien Enemy Act (Cf. R. 159).

However, later events raise serious questions as to the jurisdiction of the District Court under the statute where the majority of the present plaintiffs are concerned. As stated, *supra,* only 300 plaintiffs remain under alien enemy removal orders (see Appendix I, *infra*); 2,556 plaintiffs have become parties to the suit since the revocation of the removal orders applicable to them and their consequent release from custody (see p. 25, *supra*); and the remaining plaintiffs, who were original parties to the suit, have similarly been released from custody since it was commenced. The 300 plaintiffs, as to whom the removal orders have been continued in effect, were released from custody as a consequence of the District Court's decision in No. 12195, now pending in this Court, and in the event of ultimate reversal of that order and of the judgment of the District Court in the present cause, presumably custody over them will be resumed. In that

event, unless the removal orders are administratively revoked, they will be removed to Japan in accordance therewith. Accordingly as to these plaintiffs jurisdiction in the District Court to entertain the action against the Attorney General under Section 503 of the Nationality Act of 1940, must be conceded.

No such concession, however, can be made as to the other groups of plaintiffs mentioned. Their cases will be discussed in the order named.

(a) The cases of the 2,556 plaintiffs, who became parties to this action after they had been released from custody pursuant to revocation of the alien enemy removal orders applicable to them, are, we believe, indistinguishable from the cases of the appellees in *Clark* v. *Inouye*, 175 F. 2d 740, decided by this Court on June 23, 1949. In that case the court concluded its opinion with the statement:

> Here, in the absence of any facts constituting such a denial either in the complaint or in the proofs, the restricted jurisdiction of the District Court has not been invoked.

While it is true that the amended complaint in the present case does allege that all the plaintiffs are being held under removal orders, and no such allegation was made in the *Inouye* case, it is believed that no valid distinction can be based upon that circumstance. The allegation in the present amended complaint was true as to the plaintiffs then named therein when made. However, it was no longer true at the time that the plaintiffs now in question were permitted to become parties to this suit. There was no implied admission on the part of the defendants

that such fact was true because the defendants filed a motion to dismiss the 606 plaintiffs who had thus become parties to the suit as of the time of the motion (see Appendix D, *infra*) and the additional 1,950 plaintiffs now in question were made parties to the suit thereafter by order of Court over the objection of the defendants (see p. 25, *supra*).

In any event, if in these circumstances the pertinent allegation of the complaint should be regarded as speaking as of the time of the joinder of these plaintiffs, the allegations were not admitted but rather were denied by the defendants' motion and by its subsequent objections to the joinder of additional plaintiffs. In that view the trial court clearly erred in entering judgment on behalf of these plaintiffs without taking testimony on the issue. Particularly is this true in view of the defendants' offer of proof that as to all plaintiffs other than the 300 mentioned above and those who had voluntarily gone to Japan, no plaintiffs were under removal orders of the Attorney General (see Appendix A, *infra*).

Accordingly we submit that as to the 2,556 plaintiffs who became parties to this suit after their release from internment pursuant to revocation of their removal orders, the District Court lacked jurisdiction under Section 503 of the Nationality Act.[29]

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[29] There is, moreover, further jurisdictional difficulty under Sec. 503 as to plaintiffs who were not original parties to the suit. That action requires a plaintiff thereunder to institute his action "in the District Court of the United States for the District of Columbia or in the district court * * * for the district in which such person claims a permanent residence." The amended com-

(b) With reference to the plaintiffs who were parties to the suit prior to the revocation of their removal orders but who were thereafter released pursuant to their revocation, the question is somewhat more difficult. While the jurisdictional fact was admitted in the Attorney General's answer, the facts in that regard thereafter changed and in effect were brought to the Court's attention by the defendants' offer of proof mentioned above. It is true that no motion was made in this regard by the defendants. However, the Court's order on the defendants' motion with reference to the plaintiffs joined in the

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plaint avers (R. 94, that "each plaintiff * * * is a resident of the Northern District of California" and such allegation is admitted by the answer (R. 127), presumably because that was true of all plaintiffs who were parties at that time. However, the jurat of the complaint can hardly extend to parties later joined, nor can the admission of the answer be held to include the numerous plaintiffs joined over defendants' protest as to whom no further pleading was filed. The additions to the suit now bring the total number of plaintiffs to 4,315, which constitutes the vast majority of the 5,371 evacuees who renounced their citizenship. It would be a remarkable coincidence that the Northern District of California, from which considerably less than half of the evacuees came and to which still fewer returned (see *The Evacuated People*, pp. 46–49) should have provided almost all of those who renounced their citizenship. The answer, of course, in all probability is that many of them have been permitted to join who are not residents of the District and who have not even been required to make representations in that regard.

In these circumstances, since the defendants could not collusively confer jurisdiction on the District Court by admitting an untrue jurisdictional averment (see *Clark* v. *Inouye*, *supra*) it would seem that their inadvertent failure below to challenge the jurisdiction of the District Court upon this ground should not deprive this Court of authority to inquire into the matter and take appropriate action thereon.

action after their release, clearly discloses that any such motion would have been futile and the Court, in the circumstances then obtaining, might reasonably have regarded it as an unwarranted delaying tactic. Moreover, as this Court pointed out in the *Inouye* case, "though the answer admit the jurisdictional facts, jurisdiction may be contested by a showing of its collusive acquisition." Since this is so, it seems plain that the duty would have devolved upon this Court to inquire into the change in jurisdictional facts, which are well within its judicial notice, even if such change had not been pointed out in the defendants' offers of proof. Cf. *Southern Pacif. Co.* v. *McAdoo,* C. A. 9, 82 F. 2d 121.

The question presented here is, of course, whether or not jurisdiction once validly acquired under Section 503 of the Nationality Act, in an action instituted by a person then claiming and being denied a right or privilege as a national of the United States upon the ground that he is not a national of the United States, is lost thereafter by the granting of such right or privilege upon another ground; in this case, release from internment and revocation of removal orders upon the ground that plaintiffs are no longer to be regarded as dangerous alien enemies. In this connection it may be conceded that the literal language of the statute does not divest the court of jurisdiction thereunder, once properly acquired. When the conditions in question are met the plaintiff "may institute an action"; but nothing is said concerning the jurisdiction of the Court to continue with the cause thereafter. Accordingly it

would seem that the answer must be found by reference to more general authority; in this case, the Constitution itself.

It is clear that the judicial power of the United States created by Article III of the Constitution can operate only upon cases and controversies within the meaning of that article. *Federation of Labor* v. *McAdory,* 325 U. S. 450, 461. Here, no more than in the *Inouye* case, can the plaintiffs have reason to fear future denial of rights or privileges of nationality. In any event "claims based merely upon 'assumed potential invasions' of rights are not enough to warrant judicial intervention." *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, 324–325. Here, moreover, it is clear that appellees have no reason to fear a future invasion of their claimed rights by that officer. Cf. *Eccles* v. *Peoples Bank,* 333 U. S. 426, 434–435. Accordingly, when a case or controversy disappears from an action, that action becomes moot and must be dismissed. Cf. *Mills* v. *Green,* 159 U. S. 651. With the disappearance of the case or controversy there obviously exists nothing upon which the judicial power of the United States can operate.

* * * * *

The foregoing contentions with reference to the jurisdiction of the District Court in the action insofar as it is against the Attorney General, of course applies *a fortiori* to the other defendants named in the cause, because neither the pleadings nor the facts developed in the proceedings below disclose that at the

time of the commencement of the action, or at any later time, has there been denied to any plaintiff a claimed right or privilege as a national of the United States, which right was denied by any department or agency of which any one of them is the head, upon the ground that such plaintiff is not a national of the United States. The essence of what has occurred as to them is that the plaintiffs have asserted that they are United States citizens and by bringing this action have challenged them to deny such assertions. (Cf. *F. W. Maurer & Sons Co.* v. *Andrews,* 30 F. Supp. 637 (E. D. Pa.)). As to these defendants this Court's decision in the *Inouye* case requires a holding that they are not properly within the jurisdiction of the Court under Section 503 of the Nationality Act.

2. *Sections 1331, 1332, 2201, and 2202 of Title 28, United States Code.*—The first two sections mentioned constitute the general provisions for the jurisdiction of the district courts. Prior to the revision and enactment of Title 28 they constituted 28 U. S. C., § 41 (1), relied on by the plaintiffs as conferring jurisdiction upon the District Court. They are as follows:

> § 1331. *Federal question; amount in controversy.*—The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States. (June 25, 1948, ch. 646, § 1, 62 Stat. 930, eff. Sept. 1, 1948.)
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> * * * * *
>
> § 1332. *Diversity of citizenship; amount in controversy.—*

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and is between:

(1) Citizens of different States;

(2) Citizens of a State, and foreign states or citizens or subjects thereof;

(3) Citizens of different States and in which foreign states or citizens or subjects thereof are additional parties.

(b) The word "States," as used in this section, includes the Territories and the District of Columbia. (June 25, 1948, ch. 656, § 1, 62 Stat. 930, eff. Sept. 1, 1948.)

Sections 2201 and 2202 of Title 28, U. S. C., embody the so-called Declaratory Judgment Act, in its present form. These provisions were relied upon by plaintiffs and cited under their former designation as 28 U. S. C., § 400. They are as follows:

§ 2201. *Creation of remedy.*—In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. (June 25, 1948, ch. 646, § 1, 62 Stat. 964, eff. Sept. 1, 1948.)

* * * * *

§ 2202. *Further relief.*—Further necessary or proper relief based on a declaratory judgment

> or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment. (June 25, 1948, ch. 646, § 1, 62 Stat. 964, eff. Sept. 1, 1948.)

The considerations advanced with reference to Section 503 of the Nationality Act, in regard to the original plaintiffs to this action who have been released pursuant to the revocation of their removal orders since the action was instituted, underlie the absence in this case of "actual controversy" requisite to the granting of relief under the Declaratory Judgment Act quoted just above. Indeed, the decision of this Court in the *Inouye* case may constitute authority that neither that Act nor the general jurisdictional provisions relied upon by the plaintiffs herein, furnished the District Court with jurisdiction in this action. In that case the District Judge was not content to rely upon Section 503 of the Nationality Act and invoked *sua sponte* the Declaratory Judgment Act in aid of his jurisdiction. The question as to the applicability of that Act was briefed and argued to the Court but no notice thereof was taken in the Court's opinion. However, the judgment of the District Court was reversed for lack of jurisdiction. If the *Inouye* case does stand for the proposition that the Declaratory Judgment Act did not confer jurisdiction upon the District Court in that case, it would seem that it also stands for the proposition that the District Court equally lacked jurisdiction under 28 U. S. C., §§ 1331 and 1332, because had there been an actual controversy within the jurisdiction of the Court under

the last mentioned sections, there would automatically have been "a case of actual controversy within its jurisdiction" within the meaning of those words as used in § 2201, *supra*. Accordingly, it seems appropriate to discuss all of these sections together.

Against the possibility that the reversal in the *Inouye* case as to the Declaratory Judgment Act was based upon some error other than its lack of applicability to an action of this sort, it is deemed necessary further to discuss the matter.

As amply shown above there must necessarily be a case or controversy within the meaning of Article III of the Constitution before the judicial power of the United States can be exercised. Here, except as to the 300 plaintiffs subject to the Attorney General's removal orders, no action is being taken or threatened by him, and, insofar as is shown in the pleadings and facts of record, no action is being taken or threatened by any other defendant as to any of the plaintiffs, in deprivation of their rights. There are not here, as there were in *Perkins* v. *Elg*, 307 U. S. 325 (in which the issuance of a declaratory judgment concerning an issue of nationality, was approved), threats of imminent deportation outstanding (see 307 U. S. at 328). In the circumstances of that case, there was a case or controversy which, in absence of the Declaratory Judgment Act, would have made appropriate the exercise of the traditional injunctive powers of a court of equity; hence, the issuance of the declaratory judgment was in aid of such powers and the Act was properly invoked in respect of "a case of actual controversy within" the court's jurisdiction. Here, however, there is no occa-

sion for judicial intervention and, in fact, none is permitted. The plaintiffs find themselves in the disadvantageous position of having signed formal written renunciations of United States citizenship. Unless such renunciations were invalid, they have lost their former nationality. This, however, is not by fiat of the Attorney General but by act of Congress—8 U. S. C. 801 (i). In short, except as to the plaintiffs under removal order, there is no present controversy between plaintiffs and the Attorney General. *A fortiori,* there is no controversy between the plaintiffs and the other defendants.

We submit that the Congress approached the limit of its Constitutional power in enacting Section 503 of the Nationality Act of 1940, *supra.* (Cf. e. g., *Muskrat* v. *United States,* 219 U. S. 346; *Federation of Labor* v. *McAdory, supra.*) There it is provided that when a *claimed* right or privilege of citizenship *is denied* on grounds of noncitizenship, an action can be brought. The emphasized words demonstrate the existence of controversy. But where, as here, there is no denial, jurisdiction exists neither under Section 503 nor under 28 U. S. C., §§ 1331–1332, or §§ 2201–2202. Cf. *New Jersey* v. *Sargent,* 269 U. S. 328; *Nashville, C. & St. L. Ry. Co.* v. *Wallace,* 288 U. S. 249; *Coffman* v. *Breeze Corporation, Inc.,* 323 U. S. 316. We so submit.[30]

* * * * *

[30] It may be suggested, moreover, that Congress by enacting a special Statute—Sec. 503—carefully defining the circumstances in which a declaration of United States nationality may be obtained, did not contemplate or intend that thereafter resort for this pur-

There are, however, further objections to the action of the District Court in entering its judgment, particularly the decree of injunction herein against the Attorney General and the other named defendants.

Admittedly Section 503 of the Nationality Act authorizes the District Court to entertain a suit against the head of an executive department, in his official capacity, regardless of his district of official or personal residence, provided that the terms of the statute are met. That section, like Section 9 (a) of the Trading With the Enemy Act, 50 U. S. C., App. § 9 (a), authorizes suit in the district of plaintiffs' residence only if the action is within the consent of the statute. See *Becker Company* v. *Cummings,* 296 U. S. 74, 78; *Cummings* v. *Deutsche Bank*, 300 U. S. 115, 118; Cf. *United States* v. *Sherwood,* 312 U. S. 584, 586. However, absent such consent a government officer officially residing in the District of Columbia is beyond the reach of the process of courts outside that district. And, obviously, mere acquisition of jurisdiction over an officer in an official capacity pursuant to such consent does not confer jurisdiction over him for purposes other than those for which the consent was given. *Duisberg* v. *Crowley,* 54 F. Supp. 365, 368 (D. N. J.). Accordingly, even though the court below properly acquired jurisdiction over the Attorney General in his official capacity within the terms of the consent given by Section 503 (except as to plaintiffs who were joined

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pose should also be available under other jurisdictional provisions. In this connection it should be noted that *Perkins* v. *Elg*, *supra*, was decided prior to the enactment of that statute.

in the action after their release), he was before the court only for the purposes of that section, and the court erred in invoking its general equity powers in issuing an injunction against him. Especially is this so where, as here, there is no Congressional consent to suit against him as an officer, except as it may be found in Section 503, with the consequence that the judgment would have to go against him as a person in order to avoid the implication of an unauthorized suit against the United States. Cf. *Philadelphia Company* v. *Stimson,* 223 U. S. 605, 619–620. For that reason Rule 25 (d) of the Federal Rules of Civil Procedure requires that before a successor to a public office is substituted as a party defendant to an action against his predecessor, it must be shown by supplemental pleading that the successor adopts or continues or threatens to adopt or continue the action of his predecessor in enforcing a law averred to be in violation of the Constitution of the United States. Before substitution is made the officer, unless expressly assenting thereto, must be given reasonable notice and accorded an opportunity to object. That the case involves no controversy with the Attorney General as a person seems clear.

The original complaint was brought against the then Secretary of State, the then Secretary of the Treasury, the then Commissioner of the Immigration and Naturalization Service, the then Alien Property Custodian, the then Secretary of the Interior, the then Director, War Relocation Authority, the then Project Director, Tule Lake Center, and the then Officer in Charge, United States Department of Jus-

tice I. & N. Service at Tule Lake (R. 2–3). Thereafter a supplemental pleading was filed by plaintiffs pursuant to a stipulation signed by an Assistant United States Attorney, on behalf of the Attorney General and United States Attorney, as attorneys for the defendants, which provided "that service thereof be deemed to have been made on defendants this fourth day of March" (R. 86). Whether effectual service upon officers of the United States could thus be accomplished in view of Rule 4 (d) (5), F. R. C. P., need not, we believe, be considered here. Paraphrasing the language of the Supreme Court in *Butterworth* v. *Hill,* 114 U. S. 128, 132, unless "the acceptance of service as indorsed on the writ is to be treated as a voluntary appearance by the *officers* in the court in *California,* without objection to the jurisdiction, the case stands as *it* would if the process had been actually served on them in the District of Columbia by some competent officer." There being no authority in the District Court to cause this process to be served in the District of Columbia, the "parties proceeded, therefore, at their own risk and without the consent of *these defendants* to the jurisdiction of the Court"; hence "the Court was without jurisdiction and had no authority to enter the decree which has been appealed from" (Id., at 133).

Thereafter the plaintiffs filed their amended complaint and obtained a similar acknowledgement of service "by each of the defendants" over the signatures of the "Attorneys for the Defendants." This slight change of phraseology, we submit, does not change the result.

Thereafter a stipulation was entered into between counsel for the defendants and counsel for the plaintiffs agreeing "between the parties hereto" that successors to the offices of the Secretaries of the Treasury and Interior, be substituted in lieu of predecessors as defendants to the case (R. 124–125), and an order of substitution was thereupon entered (R. 123). This stipulation and order did no more, we submit, than place the successors in the shoes of the previous defendants, i. e., name them as parties who could appear and defend the action if they consented to do so. (Indeed, a subsequent similar stipulation merely amended "the amended complaint and pleadings herein * * * substituting the name of" a successor "as a defendant herein in lieu of * * * his predecessor in said office" (R. 454)). *Cf. Grandillo* v. *Perkins,* 36 F. Supp. 546, 547.

Other stipulations were entered into relative to the proceedings below by "Attorneys for Defendants" one of which was a stipulation and order (R. 61) "between the parties hereto that the defendants herein may have to and including" a certain day "within which to answer or plead to the complaint of plaintiffs herein, or make such motion as he may be advised." It is to be observed as to this particular stipulation that it purports to be between "the parties hereto" as distinguished from "the defendants herein" who were granted such additional time. Accordingly, it may be argued that the defendants who were within the reach of the Court's process, and therefore were parties regardless of their consent to appear and defend, were agreeing that such time extension should

be granted all defendants. However, even assuming that this motion would have constituted a general appearance prior to the adoption of the Federal Rules of Civil Procedure, it is clear that under such rules the distinction between general and special appearances has been abolished. "A defendant * * * is no longer required at the door of a federal courthouse to intone that ancient abracadabra of the law, *de bene esse,* in order by its magic power to enable himself to remain outside even while he steps within." *Orange Theatre Corp.* v. *Rayherstz Amusement Corp.,* C. A. 3, 139 F. 2d. 871, 874. The same is of course, true for the motion to strike certain matters from the original complaint (R. 125–126), which likewise was made on behalf of the "Defendants." *Phillips* v. *Baker,* C. A. 9, 121 F. 2d. 752, 754–756.

In any event, if the plaintiffs had previously labored under the assumption that the named defendants other than Clark, Hennessy, and Wixon had considered to subject themselves to the jurisdiction of the Court, the true situation should have become clear upon the filing of the answer of the defendants just named, which expressly stated (R. 127):

> Moreover, the respondents Clark, Hennessy, and Wixon assert that no defendants other than themselves have been effectively served herein and none has appeared, and, therefore, any allegations with respect to such individuals are not relevant to the cause herein set forth.

This, we submit, was the equivalent of an announcement by appearing parties, which, at least the defendant Attorney General should be considered to have been authorized to make on their behalf, that they had not consented "to the jurisdiction of the Court" (*Butterworth* v. *Hill, supra*). If a general appearance should nonetheless be found to have been entered, we submit, this clear statement in the answer should be regarded as raising the defense of improper venue under the Federal Rules of Civil Procedure. See *Phillips* v. *Baker, supra,* 755. The answer was in a case captioned in the names of the defendants; the Attorney General was certainly the proper officer to assert the defense in their behalf; nothing in Rule 8 (b) requires that more than one defense be asserted in the answer; and the defense of improper venue may properly be asserted therein. See *Orange Theatre Corp.* v. *Rayherstz Amusement Corp., supra.*

Certainly, after the answer was filed all signatures by "attorneys for defendants" should be taken to mean the defendants who had appeared in defense of the action and all motions and other matters purportedly filed by "defendants" or "respondents" should be regarded as having been submitted by those defendants who had so appeared. Accordingly, the District Court's finding (R. 469) that "each of the defendants in said cause appeared herein," is actually an erroneous conclusion of law, and the judgment entered by him against the named defendants, other than those who joined in the answer, was clearly erroneous for that reason alone. We so submit.

II

The ultimate ruling of the District Court is clearly erroneous in that under it, in practical effect, all renunciations of American citizenship by evacuees at WRA relocation centers are conclusively presumed to have been involuntary notwithstanding the lack of any evidence that they, individually, were coerced

The original opinion of the District Court herein (R. 410–427) appeared to constitute a ruling that the evidence of the general conditions prevailing at Tule Lake taken together with that relating to the psychological consequences of evacuation and subsequent events, made out a *prima facie* case for the plaintiffs, throwing upon the defendants the burden of going forward with evidence tending to prove that "plaintiffs individually acted freely and voluntarily despite the present record facts" (R. 426). Other expressions in the opinion seemed to indicate that the presumption would be overcome by proving that particular plaintiffs "were members of the pro-Japanese organizations at Tule Lake, who have already been repatriated to Japan in accordance with their express wishes" (R. 415) or by proving that certain plaintiffs "were Kibei who spent their formative years in Japan and were * * * active members of pro-Japanese groups at Tule Lake" (R. 427n).

Accordingly, when the defendants submitted their offers of proof as to particular groups of plaintiffs it was reasonably expectable, we submit, that at least where they offered (Appendix A, *infra*) to prove that certain plaintiffs were Kibei leaders of pro-

Japanese organizations who had repatriated to Japan, they would be permitted to submit such proof. This was true, also, of the offer (*Ibid.*) to prove that other plaintiffs were at WRA relocation centers other than Tule Lake when they renounced. Also, it was clearly possible that the Court would feel that the proof (offered (*Ibid.*)) that the majority of plaintiffs had sought repatriation to Japan prior to their renunciation at Tule Lake, would overcome the *prima facie* presumption, in view of the court's conclusion (R. 416) that a factor leading to decisions to renounce was the conviction that "unless they renounce they would be subject to reprisals on arrival in Japan." Although the Court, after rendering its opinion, entered an order (R. 430–437) placing the burden of proof upon the defendants—erroneously, we have submitted—certainly nothing therein indicated any change in the Court's views as to the nature of the proof of voluntary action seemingly suggested by the opinion. The Court's conclusion, therefore, that none of the offers had "any competency, relevancy or materiality to any issue * * * not heretofore decided by this court" (R. 457) is most difficult to understand.[31]

What evidence the Government possibly could submit to prove that individual plaintiffs "acted freely and voluntarily" beyond introducing the documents and transcripts of the renunciation proceedings, as

[31] A better picture of the defendant's designation, as it relates to the special offers of proof is set forth in an analytical classification which appears as Appendix I, *infra*.

was done in the *Inouye* and *Murakami* case,[32] and which the defendants offered to do in this case (see, Appendix A, *infra*), and beyond showing that individual plaintiffs had received their training in Japan, had participated in pro-Japanese patriotic activities and had voluntarily returned to Japan, we are unable to imagine. Obviously, it would be impossible for the Government to negative any possibility that evacuation and subsequent events had had some influence upon the decisions of such plaintiffs to renounce their citizenship although it is clear that many other factors were influential.[33] Paraphrasing the language of *Kirby* v. *Tallmadge,* 160 U. S. 379, 383—

> as *plaintiffs* had it in their power to explain the circumstances we regard their failure to do so as a proper subject of comment. "All evidence," said Lord Mansfield, in *Blatch* v. *Archer* (Cowper, 63, 65), "is to beweighed according to the proof which it was in the power of one side to have produced and in the power of the other side to have contradicted." It would certainly have been more satisfactory if the *plaintiffs,* who must have been acquainted with all the facts and circumstances, had given their version of the facts.

If any one of the plaintiffs had brought this action alone, no court, we submit, would have been satisfied with his mere showing of the probability that other renunciants had been coerced. Cf. *Hartsville Mill* v. *United States,* 271 U. S. 43, 47–49. The burden of

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[32] This evidence is set forth in the record in No. 11839; see, e. g., the documents relative to *Murakami* at pp. 158–166. The docu-

proof "does not shift with the evidence" (*Commercial Court* v. *N. Y. Barge Corp.*, 314 U. S. 104, 110) nor should it shift, we submit, because of the number of plaintiffs that may have joined in a suit. The complete lack of evidence in this record tending to prove that *all* plaintiffs, or that *any* individual plaintiff, renounced citizenship involuntarily, is emphasized by the fact that it cannot be inferred from this record with certainty that all or any of the persons named as plaintiffs (except two, R. 31, 75, 122), actually

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ments relative to her mitigation hearing and the order releasing her from custody are set forth at pp. 166–168. The nature of the transcripts of hearing of a pro-Japanese organization leader can well be imagined by a reading of *The Spoilage* at p. 333, *et seq.*

[33] According to *The Spoilage*, which was cited with approval by this Court in the *Murakami* case, *supra*, and is of evidence in the present case (see R. 413), the underlying factors and influences that led to many decisions to renounce were as follows:

1. Loyalty to Japan. (T. & N., 340–341. *Cf. Id.* 100–102.)

2. Belief that Japan would win the war and that a pro-Japanese record would be advantageous. (T. & N., 325–326. *Cf. Id.* 98–100.)

3. Assumption that renunciants, who later changed their minds, could escape consequences. (T. & N., 326.)

4. Desire to avoid service in United States armed forces. (T. & N., 326, 339. *Cf. Id.* 317.)

5. Anger and frustration because of prewar prejudice and discrimination against their race, climaxed by hardships and losses incident to the evacuation program. (T. & N., 349. *Cf. Id.* 95.)

6. Fear of public hostility and dread of economic hardships incident to relocating outside of centers at some future date. (T. & N., 345–350.)

7. Desire to remain with members of families who had been or might be interned as dangerous alien enemies and possibly removed or repatriated to Japan. (T. & N., 326, 350–351.)

8. Desire to keep on friendly terms with pro-Japanese acquaintances, neighbors and associates. (T. & N., 351–352.)

desire to resume their American citizenship even today.[34]

Moreover, the decision of the District Court which, since it appears to place an impossible burden of proof upon the defendant, amounts, we believe, to a ruling that all renunciations by evacuees were

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[34] The only basis for assuming that the parties named as plaintiffs herein actually desire to have their renunciations set aside is to infer that fact from the presumption that counsel would not have named them as plaintiffs if they had not authorized him to do so. This presumption, which is by no means a conclusive one (*Pueblo of Santa Rosa* v. *Fall*, 273 U. S. 315, 319), is especially weak in a case such as this, involving more than 4,000 plaintiffs; where counsel could not possibly have become personally acquainted with all of them and therefore probably is not in position personally to vouch for the accuracy of the purported requests upon which he acted. Certainly, in the case of the Kibei who renounced their American citizenship in order to become "true Japanese" (see, e. g., T & N 342) and who thereafter returned to Japan, where they now are, it is possible that they do not now desire to resume their former role of dual nationals.

In this connection it is significant that four plaintiffs have entered dismissals in this cause since the entry of the judgment herein in their favor. (A supplemental record containing such dismissals has been requested and, presumably, will be before the Court by the time this case is argued.) While it must be conceded that these four plaintiffs entered their dismissals herein in order to avoid motions by the Government to dismiss suits that they have pending before the District Court for the Southern District of California, such fact does not allay the suspicion that they had not authorized the inclusion of their names in the present cause. The suits in the Southern District are as follows: *Michiko Takigawa* v. *Acheson*, No. 8203–WM; *Norio Kiyama* v. *Acheson*, No. 10303–WM; *Yukiko Nakanishi* v. *Acheson*, No. 8652–WM; *Yemiko Hamaji* v. *Acheson*, No. 10095–WM. Three other cases by persons named as plaintiffs herein, which were pending in the Southern District, were voluntarily dismissed after judgment herein and motions filed by the Government upon the ground that they were parties to this cause. Such cases were as follows: *Tetsuo Frank*

coerced and therefore invalid, plainly defeats the congressional purpose in enacting the legislation permitting the renunciations. The legislative history of the renunciation statute[35] clearly shows that it was

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Kawakami and Isao James Kuromi v. *Acheson*, No. 8238–WM; *Toshiko Ichikwa* v. *Clark*, No. 7674–WM; *Iwao Shigei and Hajime Kariya* v. *Clark*, No. 7769–M. The case of *Yoshiko Yokoi* v. *Acheson*, No. 9986–M, is still pending there upon the Government's motion to dismiss because the plaintiff is a party to the present cause. These circumstances, we submit, make it clear that it cannot be presumed that *every* person, named as a plaintiff herein, actually seeks or desires restoration of his American citizenship.

[35] In the report of the Senate Committee on Immigration upon the bill which became the Act of July 1, 1944 (Report No. 1029, to accompany H. R. 4103, 78th Cong., 2d sess.), the Committee said:

PURPOSE OF THE BILL

> The purpose of the bill is completely set forth in a letter of the Attorney General to the chairman of the committee, dated March 15, 1944, quoted under the subheading of "General Information" of this report.
>
> * * * * *
>
> The following letter explaining the bill has been received by the Committee from the Attorney General:
>
> * * * * *
>
> The immediate purpose of the proposed legislation is to deal with the problem presented by a group of persons of Japanese descent who are native-born United States citizens but who presumably are, according to the laws of Japan, Japanese nationals, and who assert their loyalty to the Emperor of Japan and their desire to renounce their United States citizenship and to be recognized as Japanese nationals. This group, the members of which have almost without exception been placed in the segregation center at Tule Lake, Calif., by the War Relocation Authority, in various estimated to number between 300 and 1,000 persons.
>
> Under existing law, it is not possible for a national of the United States voluntarily to expatriate himself while within the United States. It therefore is not possible, under existing law, to permit these persons to abandon their United States nationality even though they openly assert loyalty to the enemy. If the law were amended as

primarily enacted in order to make possible the renunciation of the pro-Japanese segregees at Tule Lake in order that they could be treated as alien enemies and ultimately removed to Japan. The District Court said in effect that the mere fact that they were segregees

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> suggested, the members of the group to which I refer would be enabled to abandon their United States nationality. Since the members of this group may be presumed to be nationals of Japan in accordance with the laws of that country, *the members of this group could thereupon be dealt with as alien enemies under the applicable statutes.* * * * [Italics supplied.]
>
> There is no question that this is an excellent war emergency measure.
>
> The committee, after considering all of the information presented, are of the opinion the bill H. R. 4103 should be enacted into law and it is, therefore, favorably reported.

See also a similar report from the House Committee on Immigration and Naturalization (Report No. 1075, to accompany H. R. 4103, 78th Cong., 2d sess.).

In the Senate the bill was considered by unanimous consent and passed (90 Cong. Rec. 6617). In explaining the purpose of the bill (Ibid.) Senator Russell said:

> In this country there are many persons of the Japanese race who really possess a dual citizenship. They were born in this country and have American citizenship. Many of them have been back in Japan, and they really feel that their allegiance is to the Emperor of Japan. We are now detaining those people in relocation centers. Under the bill, if they apply voluntarily to divest themselves of their American citizenship they will be taken out of war relocation centers and interned as enemy aliens. We should certainly provide a method which would permit such Japanese to divest themselves of American citizenship if they really owe allegiance to the Japanese Emperor.
>
> The reason I have asked to have the bill considered at this time is that we are hopeful that a number of Japanese will take advantage of the procedure outlined in the bill so that we may offer them to the Imperial Government of Japan in exchange for American citizens who are now being held in territory occupied by the Japanese.

See, also, the references to the legislative history of this Act in the appellants' brief in *Barber* v. *Abo*, No. 12195 in this Court, at pp. 28–30.

at Tule Lake renders void even the renunciations of those who have been transported to Japan and those as to whom alien enemy removal orders are still outstanding, but as yet unexecuted due to this and companion litigation. It thus deprives the Act of its intended effect, even though the Government is in a position to prove that many plaintiffs were in the pro-Japanese group that the legislation was intended to reach.

We submit that the legislative purpose of a valid statute should not be defeated by the courts, regardless of their views concerning the wisdom or morals of the measure involved. We further submit that the District Court plainly erred on the merits in entering its judgment herein and that the judgment should be reversed.

III

The Attorney General properly approved renunciation by persons 18 years of age and older

The District Court, in its findings as to the answer to the amended complaint relating to the third cause of action, found as a "fact" that "several hundred of the plaintiffs were laboring under the legal disability and incompetency of infancy at the time they signed their respective applications for renunciations and renounced United States nationality" (R. 475). This question was briefed and argued to this Court in *Clark et al.* v. *Inouye et al.,* 175 F. 2d 740, but this Court, in reversing the District Court on jurisdictional grounds, did not decide the question. It was administratively decided by the Attorney General that

renunciations could only be executed by persons 18 years and over and such practice was followed with respect to the plaintiffs in the causes now before this Court. Accordingly, the District Court presumably was of the opinion that a person 18 or over, but under 21 years of age, could not legally renounce their citizenship under the pertinent statutes here under discussion. We submit that in so finding, the District Court was in error for the reasons hereinafter set forth.

Prior to the enactment of section 401 (i) of the Nationality Act of 1940, as amended, there was some conflict of opinion as to whether a person under the age of 21 could expatriate himself by any act of his own. The district court in *Baglivo* v. *Day,* 28 F. (2d) 44 (S. D. N. Y.) held not. To the same effect were dicta in *Ex parte Gilroy,* 257 Fed. 110, 119 (S. D. N. Y.), *McCampbell* v. *McCampbell,* 13 F. Supp. 847, 849 (W. D., Ky.), and *Ex parte Chin King,* 35 Fed. 354, 356 (D. Ore.).[36] *In re Wittus,* 47 F. (2d) 652 (E. D. Mich.), however, constituted a square holding that a woman under 21 years of age lost her citizenship through marriage to an alien under the repatriation statute then in effect. Cf. also *In re Carver,* 142 Fed. 623, 624 (C. C. Maine).

It was equally unsettled until the Supreme Court decision in 1939 in *Perkins* v. *Elg,* 307 U. S. 325, whether a minor born in the United States and hence a citizen thereof lost that citizenship if he was thereafter taken by his parents to a foreign country

[36] See also *Ludlam* v. *Ludlam*, 26 N. Y. 356, 376; *State ex rel Phelps* v. *Jackson*, 79 Vt. 504, 514.

wherein his parents obtained citizenship through naturalization. Both an administrative ruling (36 Op. Atty. Gen. 535) and a court decision (*United States* v. *Reid,* 73 F. (2d) 153 (C. C. A. 9)) had indicated prior to *Perkins* v. *Elg* that such a derivative naturalization was binding and exclusive. In *Perkins* v. *Elg,* however, those holdings were overruled, and in the course of that decision the Supreme Court utilized language which may be viewed as supporting the position taken by the district court in *Baglivo* v. *Day, supra.* It said (307 U. S. 325 at 324):

> To cause a loss of (United States) citizenship in the absence of treaty or statute having that effect, there must be voluntary action and such action cannot be attributed to an infant whose removal to another country is beyond his control and who during minority is incapable of a binding choice.

During the year following this decision Congress enacted the present Nationality Act (54 Stat. 1137).[37] Section 401 thereof provided that: "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by" the performance of any of eight different acts which were

[37] The groundwork for this legislation was laid by an interagency committee appointed by the President by Executive Order No. 6115 of April 25, 1933. Pursuant thereto the committee, composed of the Secretaries of State and Labor, and the Attorney General, submitted a proposed codification of the nationality laws of the United States which was transmitted to Congress by the President on June 12, 1938. This proposed code, as subsequently modified and amended by Congress, became the Nationality Act of 1940. *See Codification of the Nationality Laws, House Committee Print,* 76th Cong., 1st Sess.

set forth in separately lettered subdivisions (a–h, inclusive) thereto. Subsequently two further subdivisions, (i) and (j), were added by amendment. These provisions are collected in 8 U. S. C. 801 and, for convenience, are referred to hereinafter under their Code designations.

Section 403 (b) of the Nationality Act of 1940 (8 U. S. C. 803 (b)) provides as follows:

> No national under eighteen years of age can expatriate himself under subsections (b) to (g), inclusive, of section 401.

Briefly described subsection (b) relates to the taking of a foreign oath of allegiance; subsection (c) to the performance of foreign military service; (d) to the holding of certain positions in the civil service of a foreign state; (e) to voting in a foreign election or plebiscite; (f) to making a formal renunciation of United States nationality while abroad; and (g) to deserting the military or naval service of the United States in time of war. Congress thus provided that the performance of any one of these six out of the eight original acts of expatriation set forth in the Nationality Act of 1940 would cause a loss of nationality provided the performer was not under 18 years of age at the time. No provision concerning age, however, was made by the enacting Congress with respect to obtaining naturalization in a foreign state upon the individual's own initiative (8 U. S. C. 801 (a)) or with respect to a conviction of treason (8 U. S. C. 801 (h)). There is a similar silence with respect to the subsequently enacted subsections (i) and (j).

Prior to a discussion of the legislative history and administrative interpretation of 801 (i) itself, it should be pointed out that the 18-year-old minimum with respect to acts of expatriation was made general throughout the Nationality Act of 1940. Not only did Section 803 (b) adopt this minimum with respect to Section 801 (b)–(g), inclusive, but various other sections of that Act dealing with the acquisition of United States citizenship also make it evident that the enacting Congress believed that 18 should be the age at which mature and therefore binding judgments could be made with respect to nationality matters. Thus it was provided in Section 314 of that Act that an individual may become a United States citizen through the naturalization of his parents only if such naturalization takes place while the child is under 18 year of age (8 U. S. C. 714). Cognate provisions relating to the naturalization of children at the instigation of their natural or adoptive parents, *provided they are under 18 years of age,* are to be found in sections 315 (8 U. S. C. 715) and 316 (8 U. S. C. 716) of the Nationality Act of 1940. And an applicant for naturalization on his own behalf may make a declaration of intention to become a citizen of the United States only "after the applicant has reached the age of eighteen years." Section 331 of the Nationality Act of 1940 (8 U. S. C. 731).

The Congressional purpose that 18 should be the age of discretion in this field, thus clearly shown throughout the statute itself, was specifically stated prior to the enactment of Section 803 (b). This Section was proposed and its purpose was described by

the Cabinet Committee which drafted the Nationality Code,[38] as follows (*Codification of the Nationality Laws,* House Committee Print, 76th Cong., 1st Sess., p. 69):

> The reasons for adopting this provision are obvious. It does not seem reasonable that an immature person should be able to expatriate himself by any act of his own. With regard to this point see *Ludlam* v. *Ludlam,* 84 Am. Dec. 193, 208; *State of Vermont ex rel Phelps* v. *Jackson,* 79 Vt. 504; *Ex parte Gilroy,* 257 Fed. 110, 121; *U. S. ex rel Baglivo* v. *Day,* 28 F. (2d) 44. It will be observed that in this subsection the age below which a person cannot expatriate himself is set at 18 years, instead of 21 years. *It is believed that a person who has reached the age of 18 years should be able to appreciate fully the seriousness of any act of expatriation on his part.* Moreover, in time of war young men are frequently accepted for military service before they have reached the age of 21 years, and, under the laws of some foreign countries males become liable for the performance of involuntary military service when they reach the age of 18 years. [Italics supplied.]

A condensed version of this statement is also found in the report of the Senate Committee on this same legislation (Sen. Rep. 2150, 76th Cong., 3d Sess., p. 4):

[38] See last preceding footnote, *supra.* As below described the section was adopted as proposed save for the substitution of the letter (g) for the letter (h). Section 801 which this section modifies was also adopted substantially as proposed by the administrative committee—the only changes being an addition to the text of subsection (a), the deletion of a proposed subsection (f), and the addition of a new subsection (h).

> Expatriation for certain specified acts may occur after a citizen has reached the age of 18 years for the reason that in many foreign countries the duties of citizenship, including that of bearing arms, begins at the age of 18 years.

Referring again to the work of the Cabinet Committee, it is also important to note its comment with respect to what became subsection (f) of Section 801, which provides:

> (f) Making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State;

The explanatory comment of the Cabinet Committee was in part as follows (Codification of the Nationality Code, *supra,* p. 67, comment on subsection (g)):

> This provision is designed specifically for the use of persons who shall have acquired at birth the nationality of a foreign state, as well as that of the United States, and who, *upon reaching majority,* elect the nationality of a foreign state * * * [Italics supplied.]

Since the 18-year minimum set forth in 803 (b), both as proposed by the Cabinet Committee and as finally enacted, was specifically made applicable to 8 U. S. C. 801 (f) set forth above, an intent to make 18 years the age of majority with respect to the Nationality Act of 1940 becomes again apparent.

It may be argued, since subsections (a) and (h) were not included in 803 (b), that the enacting Congress meant to establish a different age limit with respect to those subsections, and that the failure to

include the subsequently enacted subsections (i) and (j) within the purview of 803 (b) is indicative of a similar intent. Even if such a conclusion were to be reached, however, it by no means follows that the age limit applicable to those subsections is 21. No stated reason for the failure of the enacting Congress to include (a) and (h) has been found in the legislative history of the Nationality Act. We may, however, speculate.

Subsection (a) involves, as does no other subsection of 801, a matter of comity between nations. As stated by the Cabinet Committee (Codification of Nationality Laws, *supra*).

> The Government of the United States took the position that such naturalization (of aliens) should be regarded as having terminated their original nationality and allegiance. It necessarily followed that this Government was obligated to recognize the naturalization of citizens of the United States in foreign countries as having the effect of terminating their American nationality and allegiance. This principle has been confirmed in various treaties concluded by the United States with foreign states. * * *

It is thus entirely possible that 801 (a) was deliberately omitted from the scope of 803 (b) in order to permit recognition of naturalizations occurring in countries permitting an acquisition of nationality therein under the age of 18, or to afford complete freedom in the negotiation of treaties with such countries.

There is moreover another, and perhaps equally plausible, explanation for the omission of subsection

(a) from the coverage of section 803 (b). Subsection (a) was proposed by the cabinet committee in the following form (Codification of the Nationality Code, *supra*):

> (a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person;

It will be seen that this proposed subsection covered two situations—the obtaining of foreign naturalization by an individual on his own initiative, and the obtaining of naturalization derivatively through the naturalization of a parent. The accompanying explanatory comment of the cabinet committee, written, of course, prior to the decision in *Perkins* v. *Elg*,[39] makes plain its brief, buttressed by the prior ruling of the Attorney General and the decision in *United States* v. *Reid, supra,* that a derivative citizenship obtained through the naturalization of a parent was binding upon an infant, no matter at what age obtained. Thus it might have been deemed inappropriate by the cabinet committee to recommend the inclusion of subsection (a) within the proviso of 803 (b). Moreover, when the enacting Congress amplified 801 (a), apparently in view of *Perkins* v. *Elg,* to provide a right of election to be exercised before attaining the age of 23 years in cases of dual nationality obtaining derivatively, a similar desire not to create confusion by the inclusion of subsection (a) within the purview of 803 (b) might have obtained.

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[39] The cabinet committee report was submitted in 1938; *Perkins* v. *Elg* was decided in 1939.

Whether or not these speculations as to the reason for this omission are correct—and it is recognized that certain difficulties exist with respect to the second hypothesis advanced—it is nearly impossible to ascribe to Congress an intent to establish a 21-year-age minimum with respect to subsection (a) when the general statutory scheme provided an 18-year minimum. The cabinet committee, which as above noted also excluded subsection 801 (a) from the draft of what became section 803 (b) quoted (at p. 67) with evident approval an opinion of a former Attorney General that: "Naturalization is without doubt the highest * * * evidence of expatriation." 14 Op. Atty. Gen. 295, 297. It may be suggested that other acts of expatriation set forth in Section 801 could conceivably be performed without knowledge of the consequences. This could hardly be said, however, with respect to the necessarily formalistic act of obtaining a foreign naturalization. And it was the consensus of the framers of the legislation that: "It is believed that a person who has reached the age of 18 years should be able to appreciate fully the seriousness of *any* act of expatriation." (See *supra.*) [Italics supplied.]

Upon the basis of the foregoing it would appear possible that the enacting Congress omitted making reference to 801 (a) in 803 (b) because it conceived that an occasion might arise for recognizing foreign naturalization obtained by persons under the age of 18, or simply because it desired to avoid possible confusion with respect to the dual nationality situation also covered therein, but it would seem incredible

that its silence in this respect indicated an intent to establish a 21-year minimum under which the obtaining of a foreign naturalization should be void.

Subsection (h) of Section 801 providing for a loss of nationality upon a conviction "by a court martial or by a court of competent jurisdiction" of "committing any act of treason or attempting by force to overthrow or bearing arms against the United States" was added to the proposed nationality code by Senate amendment.[40] Again it would appear that Congress may have had good reason for not setting a specific age minimum in such cases. It is familiar law that an infant who has reached an age of discretion may commit treason just as he may commit other crimes. See 52 *Am. Jur.* sec. 3, p. 796. It will be noted that subsection (h) requires that there be a prior conviction before a loss of nationality occurs. Thus opportunity for raising the defense of infancy in the trial court is accorded. The fact that such a defense would inevitably have to be considered by the trial court removed the necessity of a Congressional presumption of competency such as was made in 803 (b) with respect to the acts of expatriation set forth in subsections (b)–(g). We think it entirely inferable therefore that Congress proceeded on the assumption that anyone old enough to suffer the usual consequences of a treason conviction should be considered old enough to suffer the particular consequence of expatriation. Certainly

[40] Compare House Reports 2396 and 3019, both of the 76th Congress. The amendment was inserted by the Senate after the Act had passed the House.

there could be no reason for attributing to Congress an intent, entirely unspecified, to establish a higher age minimum for this most serious act than was made applicable to the actions specified in subsections (b) to (g) described *supra,* pp. 85–87.

Subsections (i) — the renunciation statute — and (j) were added to Section 801 by the 78th Congress. (Act of July 1, 1944, 58 Stat. 677; Act of September 27, 1944, 58 Stat. 746.) In neither subsection did that body specify any minimum age limit, nor did it amend 803 (b) in either case. Yet it would appear inconceivable that (j) was meant to apply only to persons 21 and over. That subsection provides:

> (j) Departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the land or naval force of the United States.

In the House debates concerning H. R. 4257, one part of which became subsection (j), the sponsor of the bill, Mr. Dickstein, stated, "Any man, any American who leaves the country for the purpose of not serving his country in time of war is a traitor, in my judgment." He was then asked by a colleague: "I understand by that *if they are within the qualifying age* and an emergency exists then it is determined that they have left the country for that purpose?" [Italics supplied.] Mr. Dickstein answered: "That is right." *90 Cong. Rec. 3261.* Again, prior to final passage of the bill, Mr. Dickstein stated that, "The

purpose of the bill is to keep out of the country certain people who evaded war service and left this country after Pearl Harbor. * * * This bill will keep them out, and they will not be given a change [sic] to come back. *They are of military age." 90 Cong. Rec. 7725–7726.* It hardly requires further demonstration that subsection (j) was intended to reach persons subject to military service at the time, nor that persons 18 years of age were subject to induction into such service prior to and after the outbreak of the last war. *Sec. 3, Selective Training and Service Act of 1940 (54 Stat. 885).*

The omission of a specified age limit in subsection (j), which as shown was made applicable to persons under 21,[41] by the same Congress which enacted subsection (i), in itself, we submit, raises a strong presumption that that body was not thinking in terms of a possible impact which the common law might have upon the additions it was making to the nationality laws. It follows that the Congressional failure to amend Section 803 (b) when enacting Section 801 (i) is thus immaterial, and we may accordingly look elsewhere to determine the true intent of Congress.

It is important to state that it is not necessary to determine whether Congress meant in passing 801 (i) to leave the question of age at large, as we believe it did with respect to subsection (h) particularly, or

[41] A subsequent administrative construction of subsection (j) has also held that an individual under 21 is subject to the provisions thereof. This conclusion was reached by the Attorney General on May 18, 1946, in the case of *In re Ismael Acosta Hernandez*, exclusion proceedings No. 56196/251.

whether it assumed that the general statutory scheme of establishing 18 as the age of majority would apply. This is because in the administration of that subsection the Attorney General adopted a rule that renunciations could only be executed by persons 18 and over. In so doing he was fully aware of the legislative background of subsection (i), for the Attorney General himself proposed its enactment to the Congress and appeared at Congressional hearings to give testimony concerning it. See Hearings, House Committee on Immigration and Naturalization (78th Cong., 2d Sess.) on H. R. 4103. Examination of these Hearings and of the debates demonstrates that although the bill was of universal applicability, a purpose of the bill was to reach persons of Japanese ancestry 18 years of age and over who had answered Question 28 in the negative (Hearings, pp. 37, 52, 54–55; 90 Cong. Rec. 1778–1779, 1786–1789, 1982–1984).[42] In the light of this fact, and in the light of the Attorney General's construction of 801 (i) permitting renunciations by persons 18 years of age (Cf. *United States* v. *American Trucking Ass'ns.,* 310 U. S. 534;[43] *Shapiro* v. *United States,* 335 U. S. 1, note 13, and cases there cited), we submit that this Court should reverse the holding of the court below that a formal renunciation of United States nationality is void unless

[42] It may be noted that the registration of persons 17 and over occurred in 1942, and that consequently such persons were at least 18 by July 1, 1944, when the renunciation statute was enacted.

[43] As there stated: "*Furthermore the Commission's interpretation gains much persuasiveness from the fact that it was the Commission which suggested the provision's enactment to Congress.*" 310 U. S. 534 at 549. [Italics supplied.]

the renunciant was at the time 21 years of age or over. A contrary ruling, we submit, would not only fly in the teeth of the manifest Congressional intent but would create a further incongruity in that formal renunciations of United States nationality, if made outside this country, would be binding at the age of 18 (8 U. S. C. 801 (f)) whereas formal renunciations occurring in this country would not.

CONCLUSION

For the reasons stated in the specification of errors, the findings of fact entered herein by the District Court are erroneous in substance and form. For all the foregoing reasons, the judgment should be reversed.

H. G. Morison,
Assistant Attorney General.

Frank J. Hennessy,
United States Attorney.

Robert B. McMillan,
Assistant United States Attorney.

Enoch E. Ellison,
Special Assistant to the Attorney General.

Paul J. Grumbly,
Attorney, Department of Justice.

APPENDIX A

[Title of District Court and cause.]

DESIGNATION OF PLAINTIFFS IN COMPLIANCE WITH THE COURT'S ORDER ENTERED HEREIN ON SEPTEMBER 27, 1948

Come now the defendants, by their undersigned attorneys, in compliance with the Court's order entered herein on September 27, 1948, and without waiving their objection to the jurisdiction of the Court over the parties and subject matter of this action or to the Court's said order or the opinion and ruling upon which the same was based, and respectfully submit by Exhibits I through XX appended hereto as parts hereof, their designation of plaintiffs as to whom it is desired to present additional evidence at special individual hearings. The evidence which the defendants will introduce against each such designated plaintiff proves or tends to prove that each such designated plaintiff renounced United States nationality and citizenship of his or her own free will, choice, desire and agency, and shows that such renunciation was not caused by duress, menace, coercion and intimidation, fraud and undue influence.

The defendants respectfully suggest that in scheduling cases for trial, it should be remembered that a final judicial determination of the case of one plaintiff listed in a particular exhibit attached hereto, may prove dispositive of the cases of all or most other plaintiffs listed in the same exhibit; therefore it is probable that much time and effort will be saved by postponing the trial of all but one or two cases listed

in a particular exhibit until after final judicial action has been taken in the cases selected for trial.

H. G. Morison,
Assistant Attorney General,
Frank J. Hennessy,
United States Attorney,
Enoch E. Ellison,
Special Assistant to the Attorney General,
Paul J. Grumbly,
Attorney, Department of Justice,
Attorneys for Defendants.

General Offer of Proof

The defendants will introduce documentary evidence as to each of the plaintiffs designated in the following Exhibits I through XX, inclusive, which will show among other things, that each of the designated plaintiffs accomplished their renunciation of citizenship under the following procedure: (a) A request in writing by such plaintiffs to the Attorney General at Washington, D. C., for a form entitled "Application for Renunciation of United States Nationality"; (b) Upon the receipt of such "Application for Renunciation of United States Nationality", the execution thereof and the dispatch of the same to the Attorney General; (c) A subsequent hearing afforded to each individual foregoing plaintiff, conducted by a Caucasian hearing officer designated by the Attorney General, at which hearing no person of Japanese descent other than the afore-mentioned individual plaintiff was present; (d) Subsequent to a hearing, the filing with the hearing officer of a form prescribed by the Attorney General of a formal written renunci-

ation of nationality and a request by such plaintiffs for the Attorney General's approval of such renunciation as not contrary to the interests of national defense; (e) The submission to the Attorney General for his approval or disapproval of the hearing officer's recommendation and the record of the hearing and any other facts upon which such recommendation was based; (f) The issuance of an order by the Attorney General approving the afore-mentioned plaintiffs' renunciation of United States Nationality as not contrary to the interests of national defense and the notification to such plaintiffs of the Attorney General's approval of their formal written renunciation of United States Nationality. All such evidence tends to prove that the renunciations of citizenship by the plaintiffs herein were of their own free will and accord and were desired by them.

By the introduction of such evidence, except as to plaintiffs listed in Exhibit VII through XI, inclusive, the defendants do not waive their contention that none of the plaintiffs has established that he is being denied a claimed right of citizenship such as would give him a cause of action under the Nationality Act of 1940 (8 U. S. C. § 903) or that there exists between him and any defendant a case or controversy giving the Court jurisdiction under Article III of the Constitution of the United States.

I

Name	*Birth date*
ABE, Ezumi	2/21/23

[Omitted are the names of 93 additional plaintiffs designated in the original designation filed in the District Court.]

With respect to the foregoing designated plaintiffs, the defendants will introduce additional docu-

mentary evidence showing that such persons received their education and formal schooling in Japan, were leaders of pro-Japanese organizations at Tule Lake, and subsequent to their renunciations of citizenship at Tule Lake, voluntarily returned to Japan.

II

Name	*Birth date*
AOKI, Masayoshi	2/18/19

[Omitted are the names of 75 additional plaintiffs designated in the original designation filed in the District Court.]

With respect to the foregoing designated plaintiffs, the defendants will introduce documentary evidence showing that such persons were leaders of pro-Japanese organizations at Tula Lake, and subsequent to their renunciations of citizenship, voluntarily returned to Japan.

III

Name	*Birth date*
ABE, Haruko	5/29/27

[The names of 330 additional plaintiffs listed in the original designation are omitted here. This list was corrected by Defendants' Supplemental Return to Court's Order to Show Cause (Appendix, p. XII, infra) by transferring four names to another group. The correct number of plaintiffs in this group, accordingly is 327.]

With respect to the foregoing designated plaintiffs, the defendants will introduce documentary evidence showing that such persons received their education and formal schooling in Japan, were members of pro-Japanese organizations at Tule Lake, and subsequent to their renunciations of citizenship at Tule Lake, voluntarily returned to Japan.

IV

Name	*Birth date*
ADACHI, Emilko	2/10/25

[The names of 383 additional plaintiffs listed in the original designation are omitted here. This list was corrected by Defendant's Supplemental Return to Court's Order to Show Cause (Appendix, p. XII, infra) by transferring two names to another group The correct number of plaintiffs in this group, accordingly is 382.]

With respect to the foregoing designated plaintiffs, the defendants will introduce documentary evidence which will show that such persons were members of pro-Japanese organization at Tule Lake, and subsequent to their renunciations of citizenship, voluntarily returned to Japan.

V

Name	*Birth date*
ADACHI, Yukiko	6/4/21

[Omitted are the names of 280 additional plaintiffs designated in the original designation filed in the District Court.]

With respect to the foregoing designated plaintiffs, the defendants will introduce documentary evidence showing that such persons received their education and formal schooling in Japan and subsequent to their renunciations at Tule Lake, voluntarily returned to Japan.

VI

Name	*Birth date*
ADACHI, Kiyoshi	9/13/26

[The names of 287 additional plaintiffs listed in the original designation are omitted here. This list was corrected by Defendants' Supplemental Return to Court's Order to Show Cause (Appendix, p. XII, infra) by transferring four names to other groups. The correct number of plaintiffs in this group, accordingly is 284.]

With respect to the foregoing designated plaintiffs, the defendants will introduce documentary evidence

which will show that such persons, subsequent to their renunciations at Tule Lake, voluntarily returned to Japan.

VII

Name	*Birth date*
HAMAMOTO, Matsuichi	4/15/06

[Omitted are the names of 5 additional plaintiffs designated in the original designation filed in the District Court.]

With respect to the foregoing designated plaintiffs, the defendants will introduce documentary evidence showing that such persons received their education and formal schooling in Japan, were leaders of pro-Japanese organizations at Tule Lake, applied for expatriation prior to their renunciations of citizenship, and are presently under Alien Enemy Removal Orders of the Attorney General.

VIII

Name	*Birth date*
AOKI, Shinichi	10/12/20

[Omitted are the names of 216 additional plaintiffs designated in the original designation filed in the District Court.]

With respect to the foregoing designated plaintiffs, the defendants will introduce documentary evidence which will show that such persons received their education and formal schooling in Japan, applied for expatriation at Tule Lake prior to their renunciations of citizenship, and are under Alien Enemy Removal Orders of the Attorney General.

IX

Name	*Birth date*
AMEMIYA, Yoshio	1/10/21

[Omitted are the names of 6 additional plaintiffs designated in the original designation filed in the District Court.]

With respect to the foregoing designated plaintiffs, the defendants will introduce documentary evidence which will show that such persons were leaders of pro-Japanese organizations at Tule Lake, applied for expatriation prior to their renunciations of citizenship, and are under Alien Enemy Removal Orders of the Attorney General.

X

Name	*Birth date*
NAKAYAMA, Toshiro	7/17/20

With respect to the foregoing plaintiff, the defendants will introduce documentary evidence which will show that such person received his education and formal schooling in Japan, was a leader of a pro-Japanese organization at Tule Lake, and is presently under Alien Enemy Removal Order of the Attorney General.

XI

Name	*Birth date*
AMEMIYA, Gore	11/11/23

[Omitted are the names of 68 additional plaintiffs designated in the original designation filed in the District Court.]

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons are under Alien Enemy Removal Orders of the Attorney General and have otherwise demonstrated that their renunciation of citizenship was voluntary.

XII

Name	*Birth date*
GOTO, Ginji	5/25/22

[Omitted are the names of 20 additional plaintiffs designated in the original designation filed in the District Court.]

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will

show that such persons received their schooling and formal education in Japan, were leaders of a pro-Japanese organization at Tule Lake and applied for expatriation prior to their renunciations of citizenship, but are not under Removal Orders of the Attorney General.

XIII

Name	*Birth date*
ABE, Isoyo	7/31/17

[Omitted are the names of 1,065 additional plaintiffs designated in the original designation filed in the District Court. Four of such plaintiffs were designated in defendants' supplemental return to Order to Show Cause (Appendix, p. XII, *infra.*]

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons received their schooling and formal education in Japan, and applied for expatriation prior to their renunciations of citizenship at Tule Lake, but are not under Removal Orders of the Attorney General.

XIV

Name	*Birth date*
IMAHARA, Masao Henry	10/28/12

[Omitted are the names of 12 additional plaintiffs designated in the original designation filed in the District Court.]

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons were leaders of a pro-Japanese organization at Tule Lake and applied for expatriation prior to their renunciations of citizenship, but are not under Removal Orders of the Attorney General.

XV

Name	*Birth date*
ABE, Takashi	5/11/18

[Omitted are the names of 1,075 additional plaintiffs designated in the original designation filed in the District Court. Five of such plaintiffs were designated in defendants' supplemental return to Order to Show Cause (Appendix, p. XII, *infra.*]

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence that such persons applied for expatriation prior to their renunciations of citizenship at Tule Lake, but are not under Removal Orders of the Attorney General.

XVI

Name	*Birth date*
FUKUMOTO, Katsumi	12/10/18

[Omitted are the names of 6 additional plaintiffs designated in the original designation filed in the District Court.]

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons received their schooling and formal education in Japan and applied for expatriation subsequent to their renunciation of citizenship at Tule Lake, but are not under Removal Orders of the Attorney General.

XVII

Name	*Birth date*
NISHIMURA, Toru	6/21/20

[Omitted are the names of 7 additional plaintiffs designated in the original designation filed in the District Court.]

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons were leaders of a pro-Japanese organization at Tule Lake and applied for expatriation subsequent to their renunciation of

citizenship at Tule Lake, but are not under Removal Orders of the Attorney General.

XVIII

Name	*Birth date*
IMOTO, Geo	6/17/24

[Omitted are the names of 10 additional plaintiffs designated in the original designation filed in the District Court.]

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons applied for expatriation subsequent to their renunciation of citizenship at Tule Lake.

XIX

Name	*Birth date*
ADACHI, Kazuo	3/11/21

[Omitted are the names of 277 additional plaintiffs designated in the original designation filed in the District Court. One of such plaintiffs was designated in defendants' supplemental return to order to show cause (Appendix, p. XII, *infra.*]

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons, although they did not receive their education in Japan, were not leaders of a pro-Japanese organization at Tule Lake, did not apply for expatriation prior or subsequent to their renunciation of citizenship and are not under Removal Orders of the Attorney General, nevertheless, otherwise demonstrated that their renunciation of citizenship was voluntary.

XX

Name	*Birth date*
DOI, Hajime	12/19/02

[Omitted are the names of 82 additional plaintiffs designated in the original designation filed in the District Court.]

With respect to the foregoing plaintiffs, the defendants will introduce documentary evidence which will show that such persons did not renounce their citizenship at the Tule Lake Segregation Center, and were not therefore subjected to the factors which this Court held, in its interlocutory decree, to be of such a nature that they cast the taint of incompetency upon the acts of renunciation of citizenship.

XXI

Name	*Birth date*
DOI, Hideko	10/30/18
KATACKA, Yukio	4/9/18
NAKAMURA, Miyoko	4/22/19
OGATA, Miyako (Louise)	11/7/16
SAKURAI, Teruo Richard	11/16/26
SUNADA, Masaru (Steve)	7/9/15
TOMITA, Hirowo (Art)	8/30/21

With respect to the plaintiffs listed in this exhibit the defendants suggest that such persons should be dismissed from this suit for the reason that their purported acts of renunciation were never approved by the Attorney General as required by Sec. 801 (i), Title 8 U. S. C.

XXII

Name	*Birth date*
FUDETANI, Shigeno	10/19/17
HASHIGUCHI, Nagatoshi	5/13/25
SHIMADA, Takeo Frank	12/19/15
SHINDE, Yoshiko (Helen)	1/3/16
SHOJI, Flora Helen	10/20/24
SUMI, Torao	5/6/20
TODA, Yoshikazu	3/14/20
UYEHARA, Yutaka Tom	10/24/17

If it should be finally determined that the Court has jurisdiction in these actions then, and in that event only, the defendants do not offer any objection to the entry of a final decree in favor of the plaintiffs listed in this exhibit for the reason that at the time of their respective renunciation of citizenship or

immediately subsequent thereto, reports of competent medical doctors indicated that such persons did not have sufficient mental capacity to accomplish a legally binding act.

APPENDIX B

[Title of District Court and cause.]

DEFENDANT'S RETURN TO COURT'S ORDER TO SHOW CAUSE WHY PREVIOUSLY FILED DESIGNATION OF PLAINTIFFS SHOULD NOT BE STRICKEN

Come now the defendants in answer to the Court's Order to Show Cause why the designation of plaintiffs as to whom the defendants wish to present further evidence at individual hearings should not be stricken and a judgment entered in favor of the plaintiffs thereon and respectfully say as follows:

1. Each such designation is accompanied by an offer of proof sufficient to meet the burden of going forward with evidence in accordance with the opinion of this court entered herein on April 29, 1948 (77 F. Supp. 806) and the court's interlocutory decree entered thereon on September 27, 1948, and further say that such designation does not constitute redundant, immaterial, impertinent or scandalous matter. The defendants further assert that questions relating to the relevancy and sufficiency of the documentary evidence mentioned in their general offer of proof, as set forth in the aforesaid designation are involved in the consolidated cases of *Clark et al* v. *Inouye et al.* and *Marshall* v. *Murakami et al.* now pending for decision before the United States Court of Appeals for the Ninth Circuit as Nos. 11839 and 12082.

2. All the designated plaintiffs in Exhibits I through XIX, inclusive, were segregated at the Tule Lake Center at the time of their renunciations pursuant to

the following pertinent provisions of Chapter 110 of the War Relocation Administration Manual, Section 110.3.

> 1. All persons in the following categories shall remain in the Tule Lake Center, or shall be transferred to that center, as the case may be:
>
> A. All persons who have formally asked for repatriation or expatriation to Japan and have not retracted their requests prior to July 1, 1943. If a Project Director should believe that residence in the Tule Lake Center by a particular person in this category would work an unnecessary hardship, he may recommend to the Director that such person be excepted from the category; and if the Director approves, such person shall be excepted.
>
> B. All persons who, at the time of the registration for Army service and war industries purposes, answered question 28 of Form WRA–126 Rev. or DSS Form 304A in the negative, or failed or refused to answer it, and (a) who have not changed their answers prior to the date of this instruction, and (b) who are in the opinion of the Project Director loyal to Japan, or are not loyal to the United States. For the purpose of segregation, no person in this category shall be considered loyal to the United States unless he expressly changes his answer to question 28 to an affirmative and satisfies the Project Director that the changed answer is bona fide.
>
> C. All persons to whom the Director has denied leave clearance. This category will include persons in the following classes after hearings have been held and if and when leave clearance has been denied under Chapter 60: (a) Persons about whom there is an adverse report by a Federal intelligence agency; (b) persons who have answered question 28 negatively and who changed their answers prior to

the date of this instruction, or who answered such question with a qualification; (c) persons who have requested repatriation or expatriation and have retracted their request prior to July 1, 1943, and persons who have requested repatriation or expatriation subsequent to July 1, 1943; (d) persons for whom the Japanese-American Joint Board established in the Provost Marshal General's office does not affirmatively recommend leave clearance; and (e) persons about whom there is other information indicating loyalty to Japan.

10/6/43
Supersedes A. I. #100

2. Members of the immediate family of a person who falls within one of the three categories set forth in Section 110.3.1 shall upon their individual request be permitted to remain with such person in the Tule Lake Center, or to accompany him to that center, as the case may be. If minor members of the immediate family who do not themselves fall within one of the categories set forth in Section 110.3.1 object to residence at the Tule Lake Center every possible assistance shall be extended in helping to work out appropriate arrangements along the lines suggested in Section VI–D of Administrative Instruction No. 65 (Manual Section 70.1), dealing with minor children of persons being repatriated. For the purpose of determining what is an immediate family the guides set forth in Section XII of Administrative Instruction No. 103 (Manual Section 30.4) shall be followed.

Question 28 of Form WRA–126 Rev. or DSS Form 304–A, referred to in the above-mentioned paragraph 1B of said WRA Manual was in the following form for answer by male citizens of Japanese ancestry 17 years of age and over.

> Question 28: Will you swear unqualified allegiance to the United States of America and faithfully defend the United States from any and/or all attack by foreign or domestic forces and forswear any form of allegiance or obedience to the Japanese Emperor, or any other foreign government, power, or organization?

The form of question 28 for female citizens is as follows:

> Question 28: Will you swear unqualified allegiance to the United States of America and forswear any form of allegiance or obedience to the Japanese Emperor or any other government, power, or organization?

3. With respect to those persons named in Exhibits XI through XIX of the designation filed by defendants, as aforesaid, the defendants in response to the said Order to Show Cause now offer to prove in addition that all of the designated plaintiffs in the said Exhibits XI through XIX, inclusive, with the exception of the following-named persons were at the Tule Lake Segregation Center as the result of answering the above quoted question 28 in the negative or as the result of refusing to answer the same.

Designated in exhibit XI

Name	*Birth date*
CHUMAN, Toshiko N	8/27/18

[Omitted are the names of 21 plaintiffs designated in the Defendants' Return to Court's Order to Show Cause filed in the District Court.]

Designated exhibit XVI

Name	*Birth date*
FUKUMOTO, Katsumi	12/10/18

Designated in exhibit XVII

Name	*Birth date*
FUKUDA, Mitsuye	4/27/26
INOUYE, Miyeko	11/21/19
YOSHIMIYA, Masanobu	7/27/20

Designated in exhibit XVIII

Name	*Birth date*
MARIMATSU, Shikuko	12/6/16
YOSHIMIYA, Mitsuye Peggy	11/6/24
YOSHIMIYA, Shizuye	11/8/22

Designated in exhibit XIX

Name	*Birth date*
AREDAS, Daniel	4/1/24

[Omitted are the names of 95 plaintiffs designated in the Defendants' Return to Court's Order to Show Cause filed in the District Court.]

The defendants do not yet have sufficient information to prove with specificity the reasons why plaintiffs listed above were segregated at Tule Lake, and in this regard, for present purposes, rely upon the presumption of administrative regularity in executing the above-quoted regulations.

4. The defendants in further answer to the Court's Order to Show Cause, again respectfully direct the Court's attention to the fact that none of the named plaintiffs in Exhibit XX renounced at the Tule Lake Segregation Center and, consequently, the factors which the Court found in its Interlocutory Decree to have existed at Tule Lake and to have cast the taint of incompetency upon any act of renunciation of citizenship clearly were not operative as to such persons.

5. In opposition to the affidavit of Wayne M. Collins filed in support of the plaintiffs' motion to strike designations, there are appended hereto as parts hereof the affidavits of Thomas M. Cooley, II and Paul J. Grumbly.

WHEREFORE, the defendants respectfully submit that the Order to SHOW CAUSE should be dis-

charged and that the plaintiffs' motion to strike the defendants' said designation should be denied.

H. G. MORISON,
Assistant Attorney General,
FRANK J. HENNESSY,
United States Attorney,
ENOCH E. ELLISON,
Special Assistant to the Attorney General,
PAUL J. GRUMBLY,
Attorney, Department of Justice.
Attorneys for Defendants.

In the United States District Court for the Northern District of California, Southern Division

No. 25294–G (Consolidated No. 25294–G)

TADAYASU ABO ET AL., ETC., PLAINTIFFS

v.

TOM CLARK, ETC., ET AL., DEFENDANTS.

AFFIDAVIT OF THOMAS M. COOLEY, II

CITY OF WASHINGTON,
District of Columbia, ss:

THOMAS M. COOLEY, II, at the specific request of the Department of Justice, being first duly sworn, deposes and says:

On April 8, 1947, I resigned my position with the Department of Justice and thereby terminated my official connection with the Alien Enemy Control Unit and the Office of the Attorney General. Since such date I have been unauthorized to act and have not acted as an attorney for the defendants in the above-entitled action.

At the time that I resigned my position with the Department of Justice, to the best of my recollection and belief, the above action was pending on cross

motions for summary judgment. I do recall that when such cross motions were filed it was my opinion that the submission of the case on cross motions had the effect of foreclosing the introduction of further evidence and it is possible that I may have expressed that opinion to counsel for the plaintiffs. However, to the best of my recollection and belief, I never at any time indicated in any way to counsel for the plaintiffs or anyone else that the Government would not, under any circumstances, introduce further evidence in the above-entitled case.

THOMAS M. COOLEY, II.

Subscribed and sworn to before me this 4th day of March, 1949.

MARY R. MCLEAN,
Notary Public.

[SEAL]

My commission expires October 14, 1951.

In the United States District Court for the Northern District of California Southern Division

No. 25294–G (Consolidated No. 25294–G)

TADAYASU ABO, ET AL., ETC., PLAINTIFFS, *v.* TOM CLARK, ETC., ET AL., DEFENDANTS.

AFFIDAVIT OF PAUL J. GRUMBLY IN ANSWER TO AFFIDAVIT OF WAYNE M. COLLINS MADE IN SUPPORT OF MOTION TO STRIKE DESIGNATION AND FOR ORDER TO SHOW CAUSE

CITY OF WASHINGTON,
District of Columbia, ss:

PAUL J. GRUMBLY being first duly sworn deposes and says:

That he is an attorney of record for the defendants herein.

That in answer to the allegations contained in Paragraph 6 of the Motion to Strike Designation, to the effect that the Designation violates the oral representations made to this Court and to counsel for the plaintiffs, by Paul J. Grumbly, such alleged oral representations being set forth more fully in the first grammatical paragraph of page 5 of the said affidavit of Wayne M. Collins, the affiant denies that he made representations to the Court or to counsel for the plaintiffs, that such designations, if any, would be few in number but that rather he represented to the Court that the survey of pertinent government records, then in progress, for the purpose of ascertaining what plaintiffs should be designated, in accordance with the opinion, decree and order of this Court allowing such designation, was not completed and that until the same was accomplished it would be impossible to determine accurately the character of the final designation of plaintiffs.

That in view of the noncompletion of the aforementioned survey, the affiant requested the Court for an extension of time for the completion of the same and the filing of a designation on or before February 25, 1949, and that at the hearing on January 25, 1949, no representation was made by the affiant with respect to the exact number of plaintiffs which would be finally designated.

That it is the affiant's best recollection that he represented to the Court that the matter of final designation was not a matter upon which affiant could speak with finality and that in response to such observation the Court indicated that while, of course, the judgment of the officials of the Department of Justice would be the guiding light in making such final determination of designees, at the same time it emphasized that the designation should be made by the Government in the utmost good faith with

the particular view that the interests of justice would be served by such designation.

That in corroboration of the afore-mentioned statement there is attached hereto and made a part hereof a copy of a letter sent by the affiant to the Attorney General on January 26, 1949, setting forth the results of the afore-mentioned hearing.

That the affiant informed the Attorney General as is shown in the attached letter of the affiant that the Court was interested in a designation of the names of such plaintiffs as the Department of Justice felt were not entitled to the benefits of the Court's equity decree restoring the citizenship of the said plaintiffs.

There is also attached hereto a copy of a letter from the Department of Justice to the United States Attorney indicating the reasons for the form of the designation.

That the affiant denies that the Court signed the order extending the defendants' time to file the said designation of plaintiffs to and including February 25, 1949, on the basis of the oral representations of the affiant that said designations would be few, if any, in number for the reason that no such representation was ever made by the affiant and to the best of the affiant's recollection the order of the Court extending the time was predicated upon representations of the affiant that the survey afore-mentioned was not completed and on the further ground that such extension of time was reasonable in view of the large number of additional plaintiffs added to the suit by plaintiffs' attorney subsequent to the issuance of the Court's opinion of April 29, 1948.

PAUL J. GRUMBLY.

Subscribed and sworn to before me this _____ day of March 1949.

SARA E. KIDWELL.

My commission expires September 14, 1951.

JANUARY 26, 1949.

Air Mail Special Delivery

Re: Tule Lake Equity Cases Nos. 25294–G, 25295–G, consolidated number 25294–G; Your ref. 93–1–1320.

THE ATTORNEY GENERAL,

Washington, D. C.

(Attention: Mr. E. E. Ellison, Claims Division.)

DEAR SIR: At a conference on January 25 in the chambers of Judge Goodman of the Northern District of California, attended by Messrs. McMillan, Collins, and Grumbly, an extension of time to designate plaintiffs, in which the Government wishes to present further evidence, was obtained to February 25, 1949. You have herewith a certified copy of the order dated and filed January 25, 1949.

The request for extension of time was vigorously opposed by Mr. Collins, attorney for the plaintiffs, and it was only after serious consideration of defendants' motion for an extension of time, that same was granted.

The Court indicated that it was not interested, for the purposes of designation, in any classification of plaintiffs to be designated but merely is interested in a simple designation of names of such plaintiffs as the Department of Justice feels should be designated and who they feel are not entitled to the benefits of the equity decree restoring their citizenship.

Judge Goodman emphasized that the designation should be made by the Government in the utmost good faith, with the particular view that the interests of justice would be served by such designation.

While Judge Goodman indicated that of course the judgment of the officials of the Department of Justice would be the guiding light in a determination of what the interests of justice would be in making such designation, he particularly emphasized the fact that the

calendar of the District Court for the Northern District of California was burdened with an overwhelming number of cases and that consequently the exercise of the highest judgment should be utilized in making such a designation so as not to further burden an already overburdened calendar.

It is suggested that in completing the remainder of the survey and in the possible reevaluation of facts already known concerning the plaintiffs in the above-entitled cases, that the admonitions and expressions of Judge Goodman be given due weight.

Respectfully,

P. J. GRUMBLY,
Attorney, Department of Justice.
[s] By R. A. MCMILLAN,
Asst. U. S. Attorney.

Encl.

HGM: PJG
93–1–1320

FEBRUARY 23, 1949.

Air Mail Special Delivery

Re: *Mary Kaname Furuya et al.* v. *Tom C. Clark, etc., et al.; Tadayasu Abo et al.* v. *Tom Clark, etc., et al.*

FRANK J. HENNESSY, *Esquire,*
United States Attorney,
San Francisco 1, California.

DEAR MR. HENNESSY: Enclosed are designations of plaintiffs in the above cases as to whom it is desired to introduce additional evidence in compliance with the interlocutory order, judgment, and decree of the Court entered herein on September 27, 1948. It is requested that such designations be filed with the Court on or before February 25, 1949, the filing date set by the Court's Order of January 25, 1949.

In making such designations we have given careful consideration to Judge Goodman's view that they should be made by the Government in the interests of justice. If this means that we should be convinced by the available evidence that the renunciations were voluntary, in the sense that they were not results of fears of physical violence but were actually desired at the time they were made, you may assure him that we are so convinced. You may further assure him that, in our view, at least as strong a case can be made for sustaining the validity of the renunciations here as were made in the cases now on appeal from the decisions of the District Court for the Southern District of California. In view of that fact and in view of Judge Goodman's opinion in the instant cases, the Attorney General feels that he cannot properly concede that the renunciations of any of the designated plaintiffs were involuntary as a matter of fact or law. He, of course, reserves the right to take a different position in the event that the decisions now on appeal should be sustained.

In view of the pending of such appeals and the possibility that they may prove dispositive of many of the instant cases it seems desirable, as a practical matter, to avoid trials as to plaintiffs designated in Exhibit XIX until after final action on the appeals. Indeed, it is within the realm of possibility that the final decisions in the cases on appeal will render any further proceedings unnecessary.

If and when the Court sets individual hearings, it is requested that this office be notified by telegram of the names of the plaintiffs, so that the necessary photostating and certification may be accomplished with dispatch. In any event it is requested that you notify

this office by telegram of the Court's action with respect to the filing of this designation.

Sincerely yours,

H. G. Morison,
Assistant Attorney General
(For the Attorney General).

Encl. 294954.

APPENDIX C

[Title of District Court and Cause.]

Defendants' Supplemental Return to Court's Order To Show Cause Why Previously Filed Designation of Plaintiffs Should Not Be Stricken

Come now the defendants in further answer to the Court's Order to Show Cause why the designation of plaintiffs as to whom the defendants wish to present further evidence at individual hearings should not be stricken and a judgment entered in favor of the plaintiffs thereon and respectfully say as follows:

1. On February 28, 1949, this Court ordered and directed that the defendants in this cause, through their attorneys, appear before this Court on March 7, 1949, to show cause why the designation of plaintiffs filed herein by the defendants on February 25, 1949, should not be stricken from the record herein.

2. That the afore-mentioned time for appearance before this Court, as above stated, was extended to March 21, 1949.

3. The defendants in their original return to the Court's Order to Show Cause offered to prove, among other things, that all of the plaintiffs in Exhibits XI through XIX, inclusive, with the exception of persons named in said return, were at the Tule Lake segregation center as the result of answering question

28 of Form WRA–126 Rev. or DSS Form 304–A in the negative, or as the result of failing or refusing to answer the said question 28.

4. The defendants, in their afore-mentioned return, with respect to the persons named therein further alleged that they, at the time of the filing of the said return, did not have sufficient information to prove with specificity the reasons why such persons were segregated at Tule Lake and for their present purposes relied upon the presumption of administrative regularity in executing WRA regulations set forth in said return.

5. As a result of the above-mentioned postponement of the appearance of the defendants' attorneys before this Court, the said defendants are now able, in most cases, to prove with specificity and now offer to prove the reasons why such plaintiffs, listed in the Defendants' Return to the Court's Order to Show Cause, were segregated at Tule Lake. These reasons are as follows:

Designated in exhibit XI

Name	*Date of birth*
TAGAWA, Hiroshi	4/14/17
FURUTANI, Jiichi	10/15/25
FURUTANI, Takeichi	9/6/23

The above-named persons formally asked for repatriation to Japan and did not retract their request prior to July 1, 1943.

Name	*Date of birth*
KOYANAGI, Fukuo	5/21/24
KOYANAGI, Kayomi	9/5/21
NAKAMOTO, Tokuji	12/18/16
SAITO, Toshio	3/9/20
SESOKO, Masaichi	12/15/18
TAMASHIRO, Shigeru	5/22/14
UEZU, Anso	12/1/13

The above-named persons were transferred to Tule Lake from Hawaii Internment Camps and requested while in Hawaii, to be repatriated to Japan.

Name	*Date of birth*
KAWANA, Richard Takao	5/14/19

The above-named person was denied leave clearance by the Project Director at Tule Lake and requested repatriation subsequent to July 1, 1943.

Name	*Date of birth*
HIRAKI, Shigeru	1/13/22
ITAGAKI, Kikuno	5/29/19

The above-named persons were denied leave clearance and answered question 28 with a qualification.

Name	*Date of birth*
MIRIKITANI, Tsutomu	6/15/20
SHIMAKAWA, Tadayoshi	8/16/20
TAIRA, Shigeko	10/21/19
TSUHA, Kiyoko	6/6/21

The above-named persons either answered question 28 of Form WRA 126 Rev. or DSS Form 304–A in the negative or failed or refused to answer.

Name	*Date of birth*
OTA, Yoshio	9/17/22

The above-named person was denied leave clearance because of his statements to the Appeal Board for Leave Clearance which indicated loyalty to Japan.

Name	*Date of birth*
UYEDA, Isamu Sam	9/29/25

The above-named person was not affirmatively recommended leave clearance by the Japanese-American Joint Board of the Provost Marshal General's Office.

Name	*Date of birth*
CHUMAN, Toshiko N	8/27/18
FUJII, George	12/14/21
KUROYE (ASANO), Sadako	8/12/22

The above-named persons answered the aforementioned question 28 in the affirmative, were eligible to leave Tule Lake and therefore presumably remained there of their own volition. At the time of their mitigation hearings in January and February 1946, each of them freely admitted loyalty to Japan.

Designated in exhibit XVI

Name	*Date of birth*
FUKUMOTO, Katsumi Jimmy	12/10/18

The above-named person answered the afore-mentioned question 28 in the negative, changed his answer to the affirmative on April 17, 1943, and subsequently on October 25, 1943, changed his answer to the negative.

Designated in exhibit XVII

Name	*Date of birth*
YOSHIMIYA, Masanobu Jim	7/27/20

The above-named person failed to answer the said question 28.

Name	*Date of birth*
FUKUDA, Mitsuye (Mitsugi)	4/27/26

The above-mentioned person was not 17 years of age or older during the registration of citizens at relocation camps (February 1943 through March 10, 1943) and, as yet, lacking further information concerning the reason for his presence at Tule Lake, the defendants, for present purposes, rely upon the presumption of administrative regularity in executing the WRA Regulations set forth on pages 2 and 3 of their original return and say that said plaintiff was at Tule Lake voluntarily.

Name	*Date of birth*
INOUYE, Miyeko	11/21/19

With respect to the above-mentioned person the defendants do not, as yet, have knowledge of the reason why such person was at Tule Lake and therefore, for present purposes, continue to rely upon the presumption of administrative regularity in executing the above-mentioned WRA Regulations.

Designated in exhibit XVIII

Name	*Birth date*
NARIMATSU, Shikuko	12/6/16

The above-mentioned person answered question 28 in the affirmative, had been approved for leave clear-

ance and consequently was at Tule Lake as a result of her own volition. Her stated reason for renunciation was that she wished to accompany her husband to Japan and thought it better to renounce for that purpose.

Name	*Birth date*
YOSHIMIYA, Mitsuye Peggy	11/6/24
YOSHIMIYA, Shizuye	11/8/22

With respect to the above-mentioned persons the defendants do not have knowledge of the reason why such persons were at Tule Lake and consequently for present purposes, continue to rely upon the presumption of administrative regularity in executing the WRA Regulations quoted in their return.

Designated in exhibit XIX

Name	*Birth date*
FUKUGAWA, Hiroko (Yagi)	4/22/19

[Omitted are the names of 16 plaintiffs designated in the Defendants' Supplemental Return to Court's Order to Show Cause filed in the District Court.]

The above-named persons answered question 28 of Form WRA 126 Rev. or DSS Form 304–A in the negative or failed or refused to answer the same.

Name	*Birth date*
KIYONAGA, Yoshio	4/21/20
MATSUMOTO, Kameichi Kay	4/24/22
NAKAMURA, Anna Mieko	12/25/25
YOKOTA, (Nii), Shizuko	2/8/23

The above-mentioned persons applied for repatriation prior to July 1, 1943, and did not retract their requests prior to July 1, 1943.

Name	*Birth date*
HAMASAKI, Tomiko Rose	3/25/14
IKEDA, Tamotsu Tom	2/14/23
IKEJIRI, (Shizuka) Gladys	6/16/23
SHIGEI, Iwao	8/28/15

The above-named persons were denied leave clearance and applied for repatriation subsequent to July 1, 1943.

Name	*Birth date*
(ISHIBASHI) HATANAKA, Amy Murako	6/26/25
NAKAD, Fujiko June	4/6/23
SUZUKI, Takashi	10/2/22
MUNEKAWA, Satoru Ted	7/13/24

The above-mentioned persons were not affirmatively recommended for leave clearance by the Japanese-American Joint Board of the Provost Marshal General's Office.

Name	*Birth date*
TANIGUCHI, Masashi	8/2/19
TAIRA, Kotaro	3/18/17
ORIMOTO, Kozo	1/22/23
OKADA, Isao	9/4/15
NISHIOKA, Kuniaki	7/1/16
MUTA, Shinichi	6/3/22
MURAKAWA, Takeo	10/30/17
KUMASAKI, Tamotsu	2/4/21
KAGEURA, Yutaki	2/20/24

The above-mentioned persons were interned in Hawaii and were subsequently transferred to Tule Lake for the reason that at Internee Hearing Boards they made statements which indicated loyalty to Japan.

Name	*Birth date*
AREDAS, Daniel	4/1/24

[Omitted are the names of 43 plaintiffs designated in the Defendants' Supplemental Return to Court's Order to Show Cause filed in the District Court.]

The above-mentioned persons answered the said question 28 in the affirmative, were not denied leave clearance and therefore presumably were at the Tule Lake Center as a result of their own volition.

Name	*Birth date*
HAMASAKI, Nagisa	8/13/26

[Omitted are the names of 9 plaintiffs designated in the Defendants' Supplemental Return to Court's Order to Show Cause filed in the District Court.]

The above-named persons were not 17 years of age or older during the registration of citizens at reloca-

tion camps (February 1943 through March 10, 1943) and lacking further information concerning the reason for their presence at Tule Lake, the defendants, for present purposes, continue to rely upon the presumption of administrative regularity in executing the WRA Regulations set forth on pages 2 and 3 of their original Return, and say that such plaintiffs were at Tule Lake voluntarily.

Name	*Birth date*
NOMURA, James Susumu	2/25/25
SANO, Tome Louise	3/25/21
SHIMOMOTO, Tazuko Mary Snow	3/3/25
TAKAHASHI, Shigeo	4/12/16

With respect to the above-mentioned persons the defendants, as yet, have no knowledge why such persons were at Tule Lake and for present purposes continue to rely upon the presumption of administrative regularity in executing the above-mentioned WRA Regulations.

6. In Exhibits III, IV, and VI of the Defendants' "Designation of Plaintiffs" filed in this court on February 25, 1949, the names of certain plaintiffs hereinafter set forth were erroneously included therein. Such erroneous designation, together with a corrected designation is as follows:

Listed erroneously in Exhibit III	*Correct exhibit designation*
DOHI, Keiichi	XIII
KOSHINO, Masao	XIII

Listed erroneously in Exhibit III	*Correct exhibit designation*
MURAKAMI, Shigenobu	XIII
TAKIGUCHI, Fujiko (nee Maruyama)	XIII

Listed erroneously in Exhibit IV	*Correct exhibit designation*
HAMACHI, Fusako	XV
OHATA, Toshiko (married name YOSHIOKA, Toshiko)	XV

Listed erroneously in Exhibit VI	*Correct exhibit designation*
FUJIOKA, Tadashi	XV
NAKANISHI, Fumiko	XV
UYEKAWA, George	XV
IKE (KOSAKO) Kiyoko Kay	XIX

WHEREFORE, the defendants respectfully renew their submission that the Order to Show Cause should be

discharged and that the plaintiffs' Motion to Strike the Defendants' Designation should be denied.

NEWELL A. CLAPP,
Acting Assistant Attorney General,
FRANK J. HENNESSY,
United States Attorney,
ENOCH E. ELLISON,
Special Assistant to the Attorney General,
PAUL J. GRUMBLY,
Attorney, Department of Justice,
Attorneys for Defendants.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

No. 25294–G (Consolidated No. 25294–G)

TADAYASU ABO, ET AL., ETC., PLAINTIFFS,

v.

TOM CLARK, ETC., ET. AL., DEFENDANTS.

No. 25295–G (Consolidated No. 25294–G)

MARY KANAME FURUYA, ET AL., ETC., PLAINTIFFS,

v.

TOM CLARK, ETC., ET. AL., DEFENDANTS.

DEFENDANTS MOTION TO DISMISS

The defendants move the Court to dismiss these actions as to the individual plaintiffs whose names are set forth in the verified schedule attached hereto, made a part hereof and marked "Exhibit A", because

(1) such plaintiffs were not being denied rights of citizenship by anyone under the administrative con-

trol of the defendants, or either of them, within the meaning of the Act of October 14, 1940, 8 U. S. C. § 903, at the times that they became parties to these actions and, therefore, the Court lacks jurisdiction over the subject matter of these actions as to them; and

(2) the complaints fail to state claims within the jurisdiction of this Court upon which relief can be granted such plaintiffs.

The motion will be based upon the records and files herein and upon the memorandum of points and authorities filed in support thereof.

FRANK J. HENNESSY,
United States Attorney.

———— ————,
Assistant United States Attorney.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

No. 25294–G (Consolidated No. 25294–G)

TADAYASU ABO, ET AL., ETC., PLAINTIFFS,

v.

TOM CLARK, ETC., ET. AL., DEFENDANTS.

No. 25295–G (Consolidated No. 25295–G)

MARY KANAME FURUYA, ET AL., ETC., PLAINTIFFS,

v.

TOM CLARK, ETC., ET. AL., DEFENDANTS.

VERIFIED SCHEDULE

I, CHARLES M. ROTHSTEIN, having been duly sworn, depose and say:

That I am the Director of the Alien Enemy Control Unit in the Department of Justice;

That in such capacity I have control of, and personal knowledge of the contents of the files of said Department relating to the renunciations of citizenship by the plaintiffs named herein.

That as a result of the examination of the contents of such files, I state with respect to the following schedule that the dates of the release from custody of the respective plaintiffs and the dates of their becoming party-plaintiffs to these actions are as shown by such official records and correct to the best of my knowledge and belief.

Name	*Joined action*	*Released*
ADACHI, Toshiyo ----------	March 4, 1946 ------	February 1, 1946

[Omitted are the names and dates of release and joinder to action of 605 additional plaintiffs designated in the verified schedule in the District Court. Each plaintiff was released prior to their becoming a party to this action.]

CHARLES M. ROTHSTEIN,
Director, Alien Enemy Control Unit.

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this ____ day of ----------, 1950.

MARY R. McLEAN.

APPENDIX E

HGM/EEE
146–54–5501 OCTOBER 25, 1949.

Re: *Acheson et al.* v. *Murakami et al.*
Your ref: *F130–Murakami, Miye Mae*

THE DEPARTMENT OF STATE,
Washington 25, D. C.

(Attention Mrs. Ruth B. Shipley,
Chief, Passport Division.)

DEAR SIRS: This is in response to your letter of September 9, 1949, and confirms the tentative views ex-

pressed to you orally by Mr. Enoch E. Ellison of the Claims Division of this Department in a telephone conversation on October 4, 1949. As you were informally advised on the last-mentioned date, the Solicitor General has determined that the Supreme Court will not be asked to review the decision of the United States Court of Appeals for the Ninth Circuit in the above-entitled case.

In view of the Solicitor General's ruling, this Department has decided not to oppose relief in future cases of this kind coming fairly within the decision of the Court of Appeals in the subject case, provided that the suits are within the jurisdiction of the courts. This, of course, does not apply to the cases of renunciants as to whom the Government files disclose evidence of loyalty to Japan or disloyalty to the United States. Such cases will be vigorously defended.

The record in the *Murakami* case, in addition to evidence relating to the general conditions of evacuation and residence in the War Relocation centers, consisted only of affidavits by the plaintiffs concerning their individual reasons for renouncing their citizenship and the pressures which drove them to such action. Among the questions posed to the Court of Appeals was that of whether or not such evidence on the part of the plaintiffs was sufficient to establish a *prima facie* case. Hence, the decision of the Court of Appeals affirming the judgment of the District Court by strongest implication approves stipulations for the use of affidavits in lieu of oral testimony in cases coming within the coverage of that decision. Accordingly, in future cases, where information in the Government's files taken together with affidavits which the plaintiffs wish to submit as evidence in lieu of oral testimony, bring the cases of such plaintiffs fairly within the coverage of the *Murakami* decision, this

Department will stipulate that the affidavits may be accepted in evidence and further will announce to the courts that in its view such cases are covered by the Murakami decision and, therefore, no objection will be interposed to the granting of relief. It is believed that this procedure will save the Government and the courts much expense and time in the trial of the numerous cases which are already pending and which undoubtedly will be brought.

Whether or not your Department will require the renunciants to obtain court adjudications as to their citizenship prior to the issuance of passports is, of course, a matter for you to decide. If you decide to apply the Murakami decision in that connection without requiring such judicial determination in each case, and if you desire to know the litigating position that this Department will take in particular cases, this Department will be happy to furnish you with an expression of such views as it may be able to formulate from the information available to it. In that event it would be helpful and, we believe, in most cases necessary to obtain from the applicant an affidavit which would be acceptable in lieu of oral testimony under the procedure described above.

Such an affidavit should not only explain the reasons and pressures which led to the renunciation but it should also explain, to the extent possible, actions which the renunciant might have taken from which inferences of disloyalty might be drawn. The affidavit should be specifically addressed to the circumstances of the particular case and should not consist of generalities. Although affiants should so state when they are uncertain as to matters related in their affidavits, normal inaccuracies of memory will not necessarily cause them to be disregarded. Where an affiant claims that any action was taken by him as the

result of fear, he should state in each instance, with the greatest possible particularity, what was feared and why. If it is claimed that the fears were caused by threats from individuals or groups of individuals, the nature of the threats, the names of the individuals making them, if known, and the time, place, and occasion for the making of the threats should be given. The affidavits should cover the following subjects:

1. Full name, date and place of birth of affiant.

2. If affiant was born prior to December 1, 1924, he should state whether or not he ever renounced his Japanese nationality and if so, where, when, and before whom such renunciation occurred. If applicant was born after December 1, 1924, he should state whether or not his parents caused his name to be registered with a Japanese consulate for the purpose of reserving his Japanese nationality and, if so, whether or not the applicant thereafter renounced his Japanese nationality, giving the same detail as to renunciation as in the case of persons born prior to that date.

3. If affiant has ever been in Japan he should state the dates and duration of each visit and the purpose of every such visit. He should also state the nature and extent of any formal education received in Japan.

4. If affiant at any time or times made application for expatriation or repatriation to Japan, he should state the reason or reasons therefor.

5. If at any time affiant expressly indicated that he would not swear unqualified allegiance to the United States or if he declined to answer, or gave a qualified answer to the question asked at War Relocation centers as to whether or not he would so swear, he should state the reasons for such action. If at any time affiant changed his answer to such question to "yes," or would have been willing to do so if the

opportunity had been presented, he should state his reasons therefor and the approximate time that he changed his mind. If affiant changed his answer to such question from "yes" to "no," or declined to change it from a "no" answer, or qualified answer, or a refusal to answer, to "yes," knowing that such change or failure to change would result in his being sent to the W. R. A. Segregation Center at Tule Lake, he should explain why he so acted.

6. If affiant at any time was a member of:

Black Dragon Society (Kokuryu Kai),

Central Japanese Association (Beikoku Chuo Nipponjin Kai),

Central Japanese Association of Southern California,

Dai Nippon Butoku Kai (Military Virtue Society of Japan or Military Art Society of Japan) (Hokubei Kai),

Heimuska Kai, also known as Nokubei Heieki Gimusha Kai, Zaibel Nihonjin, Heiyaku Gimusha Kai, and Zaibei Heimusha Kai (Japanese residing in American Military Conscripts Association) (Heimusha Kai),

Hinode Kai (Imperial Japanese Reservists),

Hinomaru Kai (Rising Sun Flag Society—a group of Japanese War Veterans),

Hokubei Zaigo Shoke Dan (North American Reserve Officers Association),

Japanese Association of America (Zaibei Nihonjin Kai),

Japanese Overseas Central Society (Kaigai Dobo Chuo Kai),

Japanese Overseas Convention, Tokyo, Japan, 1940,

Japanese Protective Association (Recruiting Organization),

Jikyoku lin Kai (Current Affairs Association),
Kibei Seinen Kai (Association of U. S. Citizens of Japanese Ancestry who have returned to America after studying in Japan),
Nanka Teikoku Gunyudan (Imperial Military Friends Group or Southern California War Veterans),
Nichibei Kogyo Kaisha (The Great Fujii Theatre),
Northwest Japanese Association,
Sakura Kai (Patriotic Society, or Cherry Association—composed of veterans of Russo-Japanese War) (Cherry Blossom Society),
Shinto Temples,
Sokoku Kai (Fatherland Society),
Suiko Sha (Reserve Officers Association Los Angeles),
Hokoku Seinen-dan,
Hokoku Joshi Seinen-dan,
Sokoku Kenkyu Seinen-dan,
Sokuji Kikoku Hoshi-dan,

he should state why he became such a member and, to the best of his recollection, the time, place, occasion and means whereby he became such a member. He should state also the nature of his actions in the organization and any offices that he might have held. If he at any time voluntarily discontinued such membership he should give the approximate date and reasons for doing so. If affiant claims that his membership, his actions, or his acceptance of any such office was due to misunderstanding of the purpose or nature of the organization and if he claims that he at any time wished to discontinue such membership, activities, or office, but was prevented from doing so he should explain fully.

7. Affiant should give a full explanation of the reasons for, and the approximate time of, his decision to apply for forms upon which to renounce his United States citizenship. If such reasons were different from those stated to the officer who held the renunciation hearing, he should explain the reasons for such differences. If it is claimed that the renunciations were caused by fear, he should explain fully why such fear extended from the time of the application for renunciation papers until the date of actual renunciation and why, if such was the case, there was no effort to withdraw such renunciation, prior to the approval of the Attorney General. If after such approval the applicant asked the Attorney General to withdraw his approval or to cancel the renunciation, he should explain the reason why he delayed making such request.

8. If affiant has returned to Japan since renouncing his United States citizenship, he should state fully the reasons for such action.

9. Affiant should state whether or not he has taken any action to resume or to acquire Japanese citizenship, and if so, the nature of the action taken and the reasons therefor.

This Department will be pleased to receive any comment that you may care to make concerning its proposed program and to learn of any general decisions which you may make concerning the future handling of passport applications in such cases. We, of course, will be happy to extend any additional information or assistance that you may care to request.

Sincerely yours,

H. G. Morison,
Assistant Attorney General
(*For the Attorney General*).

APPENDIX F

DEPARTMENT OF STATE,
Washington, Nov. 29, 1949.

In reply refer to
130–Japanese/326.

MR. H. G. MORISON,
Assistant Attorney General,
Department of Justice,
Washington 25, D. C.

MY DEAR MR. MORISON: Reference is made to your letter of October 25, 1949, File No. HGM/EEE, 146–54–5501, giving your views regarding the scope of the decision of the United States Court of Appeals for the Ninth Circuit.

You indicate in your letter that in view of the decision of the Solicitor General not to appeal the aforementioned decision, your Department has decided not to oppose relief in future cases of this kind coming fairly within the decision of the Court of Appeals. You also indicate that the cases of renunciants as to whom the Government files disclose evidence of loyalty to Japan or disloyalty to the United States are considered as not coming within the scope of the Murakami decision and that such cases will be opposed vigorously.

In view of the determination of the Solicitor General not to appeal the Murakami decision, this Department has reached the conclusion that it will recognize as an American citizen any Japanese renunciant who is able to bring his or her case within the meaning of the Murakami decision. For the purpose of determining whether an individual case comes within the meaning of the aforementioned decision, each renunciant will be required to execute an affidavit along the lines suggested in your letter. This affidavit, when

received, will be forwarded to your office for an expression of your views in the matter and upon the receipt of your reply, this Department will determine whether the subject should be documented as an American citizen.

The procedure mentioned above will apply to renunciants who apply for American passports in this country as well as to renunciants who apply for documentation as American citizens abroad.

Sincerely yours,

/s/ R. B. Shipley,
R. B. Shipley,
Chief, Passport Division.

Enclosure:
Copy of this letter.

APPENDIX G

For Immediate Release: Wednesday, October 26, 1949.

Department of Justice

Attorney General J. Howard McGrath today announced that the Department of Justice will not ask the Supreme Court to review the recent decision of the United States Court of Appeals for the Ninth Circuit holding that three American-born women of Japanese ancestry continue to be United States nationals notwithstanding the fact that they renounced their citizenship during the war after having been evacuated from their homes in the West Coast Defense Area and placed in the War Relocation Center at Tule Lake, California.

This decision was handed down on August 26, 1949, in the case of *Dean Acheson, as Secretary of State,* v. *Miye Mae Murakami et al.*

The Court's opinion, which was written by Chief Judge Denman, stressed the findings of Judge Mathes of the United States District Court at Los Angeles, that plaintiffs were loyal American citizens who had been subjected to propaganda and abuse by pro-Japanese pressure groups while they were residents at the Tule Lake Segregation Center.

The Court said that fear of reprisal from such groups caused some of the renunciations and that others renounced becaused they feared prejudice and possible violence at the hands of the white population if they left the center.

These considerations led the Court of Appeals to affirm the decision of the District Court that the plaintiffs' applications for passports had been erroneously denied by the State Department.

While the Court of Appeals seems to have indicated also, that the evacuation program was influenced by race prejudice, the Attorney General made it clear that he did not concur in that view. He feels, however, that the facts found by both the District Court and the Court of Appeals to the effect that, although the plaintiffs did not wish to do so, they were actually driven to their decisions to renounce by fears engendered by intimidating activities of pro-Japanese groups at Tule Lake or hostility of Caucasians outside the center, constituted a sufficient basis upon which the courts could reasonably hold that the renunciations were coerced and were, therefore, invalid.

In further amplification of the position of the Department of Justice, Assistant Attorney General H. Graham Morison said that the decision of the Court of Appeals would be accepted and applied by it in all future cases of this kind brought within the jurisdiction of the courts.

This, of course, does not apply to any renunciant as to whom the Government files disclose evidence of disloyalty to the United States.

He explained that although application of the decision under the Attorney General's ruling requires the introduction of evidence as to the reasons for individual renunciations, the simplified procedure approved in that case could probably be made available to plaintiffs by stipulation in the vast majority of the cases coming within the scope of the decision, thus making it unnecessary for them to give oral testimony in Court.

Mr. Morison declined to express an opinion as to whether or not the Department of State would require other renunciants to obtain judicial adjudications of citizenship prior to the issuance of passports.

APPENDIX H

The pertinent regulations of the Attorney General of October 6, 1944, pursuant to 8 U. S. C. § 801 (i), read as follows (9 Fed. Reg. 12241; 8 C. F. R. (Supp. 1944) 316, *et seq.*):

> § 316.2 *Nationals permitted to apply for renunciation.* Any national of the United States may make in the United States a request in writing to the Attorney General, Department of Justice, Washington, D. C., for the form of "Application for Renunciation of United States Nationality."
>
> § 316.3 *Filing of application.* A completed and signed application for renuncation of United States nationality on the form prescribed by the Attorney General may be sent to the Attorney General, together with any certificate of citizenship, certificate of naturalization, certificate of derivative citizenship and

any United States passport which may have been issued to the applicant. An applicant will be notified if it is determined upon the application that the requested renunciation appears to be contrary to the interests of national defense.

§ 316.4 *Hearing on application.* A hearing will be conducted by a hearing officer, designated by the Attorney General, upon each application for renunciation which does not appear to be contrary to the interests of national defense.

§ 316.5 *Formal written renuncation of nationality.* After a hearing the applicant may file with the hearing officer, on a form prescribed by the Attorney General, a formal written renunciation of nationality and a request for the Attorney General's approval of such renunciation as not contrary to the interests of national defense.

§ 316.6 *Hearing officer's recommendation.* The hearing officer shall recommend approval or disapproval by the Attorney General of the applicant's request for approval of the formal written renunciation of nationality. The hearing officer, in making his recommendation, is authorized to consider not only the facts presented at the hearing, but also results of any investigation and any information which may be available to him in reports of Government agencies or bureaus, and from other sources, ing to the effect of renunciation of nationality relating to the applicant's allegiance and relatupon the interests of national defense.

§ 316.7 *Approval or disapproval by Attorney General.* The hearing officer's recommendation and the record of the hearing and any other facts upon which it is based, will be submitted to the Attorney General for his approval or disapproval of the applicant's formal written renunciation of nationality. A renuncia-

tion of nationality shall not become effective until an order is issued by the Attorney General approving the renunciation as not contrary to the interests of national defense.

§ 316.8 *Notice of Attorney General's decision.* The applicant will be notified of the Attorney General's approval or disapproval of the formal written renunciation of nationality. Notice of the approval of renunciation of nationality shall be given to the State Department, the Alien Property Custodian, Foreign Funds Control Section of the Treasury Department, and the Federal Bureau of Investigation and the Immigration and Naturalization Service of the Department of Justice. The notice to the Immigration and Naturalization Service shall be accompanied by any certificate of citizenship, certificate of naturalization or certificate of derivative citizenship issued to and surrendered by the applicant as required by § 316.3 hereof. Upon receipt of such notice and evidence of citizenship so surrendered, the Immigration and Naturalization Service shall notify the clerk of the court in which the applicant's naturalization occurred that the renunciation of nationality has been approved and the clerk of the court shall be requested to enter that fact upon the record of naturalization.

The notice to the Department of State shall be accompanied by any United States passport surrendered by the applicant as required by § 316.3 hereof.

§ 316.9 *Effective period of these regulations.* These regulations shall be effective from the date hereof and until cessation of the present state of war unless sooner terminated by the Attorney General.

FRANCIS BIDDLE,
Attorney General.

OCTOBER 6, 1944.

APPENDIX I

ANALYTICAL CLASSIFICATION OF PLAINTIFFS BY GROUPS SHOWN IN DEFENDANTS' OFFERS OF PROOF SET FORTH IN APPENDIX A THROUGH APPENDIX C, SUPRA

(1) The first group is composed of the 1,444 renunciants (covered by Exhibits I–VI, Appendix A, *supra,* who, instead of asking for mitigation hearings relative to their alien enemy removal orders, voluntarily went to Japan. Of this number 700 are Kibei, 93 of whom were leaders of pro-Japanese organizations at Tule Lake, and 327 were members. Of the 742 Nisei in this group, 76 were pro-Japanese organization leaders and 382 were members.

(2) The second group of plaintiffs is composed of the 2,780 renunciants, who renounced at Tule Lake (covered by Exhibits VII–XIX, as amended and amplified by subsequent pleadings) and who contested their removal orders by administrative mitigation hearings and *habeas corpus* proceedings. The following table gives a break-down of the special offers of proof as to this group:

Exhibit Nos.	Plaintiffs covered by exhibits	~~Kebie~~ Kibei	Now under alien enemy removal orders[1]	Leaders of pro-Japanese organizations	Applied for repatriation or expatriation prior to renunciation	Applied for same after renouncing	Segregated because of answers to loyalty question	Same because denied leave clearance	Voluntarily at center with family members
VII	6	6	6	6	6				
VIII	217	217	217		217				
IX	7		7	7	7				
X	1	1	1	1					
XI	69		69		10		50	6	3
XII	21	21		21	21				
XIII	1,066	1,066			1,066				
XIV	13			13	13				
XV	1,076				1,076				
XVI	7	7				7	7		
XVII	8			8		8	6		2
XVIII	11					11	8		3
XIX	278				4		199	17	58
Totals	2,780	1,318	[2]300	56	2,420	26	270	23	66

[1] Removal orders are permissible under the Alien Enemy Act only where a renuncient was a dual national prior to his renunciation. The appeal in *Wixon* v. *ABO*, No. 12195, now pending in this Court, raises the question of whether any natural citizen of the United States can be a dual national under our law. However, a number of removal orders had to be revoked upon discovery that renunciants were not Japanese citizens under the law of Japan, in any event.

[2] Two plaintiffs in cause No. 12196 also are under removal orders, making a total of 302 such plaintiffs in these litigations.

(3) The third group consists of 83 plaintiffs (covered by Exhibit XX) who were not at the Tule Lake Segregation Center when they renounced.

(4) The final group (covered by Exhibit XXII) consists of eight plaintiffs admittedly lacking sufficient mental capacity to accomplish legally binding acts. If it should be held that the District Court has jurisdiction as to them, there would be no defense to their cases on the merits.[1]

[1] A further group of seven plaintiffs whose renunciations the Attorney General had not approved (Exhibit XXI), was removed from the case by voluntary dismissal prior to judgment.

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